S. HRG. 99-479

OVERSIGHT OF THE MOTOR CARRIER SAFETY ACT OF 1984

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE MOTOR CARRIER SAFETY ACT OF 1984

OCTOBER 29, 1985

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CONTENTS

Page

Opening statement by the Chairman 1
Opening statement by Senator Ford 2
Opening statement by Senator Hollings 3

LIST OF WITNESSES

Donohue, Thomas J., president and chief executive officer, American Trucking Associations, Inc.; Richard P. Schweitzer, legislative counsel, Private Truck Council of America; Norman R. Sherlock, president and chief executive officer, American Bus Association, accompanied by Robert Forman, vice president, Safety and Security, Trailways Lines; and Wayne J. Smith, executive director, United Bus Owners of America 41
Prepared statements:
Mr. Donohue 43
Questions of the Chairman and the answers 52
Mr. Schweitzer 56
Questions of the Chairman and the answers 59
Mr. Sherlock 63
Questions of the Chairman and the answers 69
Mr. Smith 71
Questions of the Chairman and the answers 73
Durham, R. V., director of safety and health, International Brotherhood of Teamsters; accompanied by Tim Scully, assistant director, legislative department 26
Prepared statement 34
Questions of the Chairman and the answers 38
Eisenhart, Earl, director of legal services, American Association of Motor Vehicle Administrators; and Charles D. Gray, assistant general counsel, National Association of Regulatory Utility Commissioners 82
Prepared statement 85
Questions of the Chairman and the answers 88
Landis, Richard, Associate Administrator for Motor Carriers, Federal Highway Administration 13
Prepared statement 15
Questions of the Chairman and the answers 18
Taylor, Hon. Reese H., Jr., Chairman, Interstate Commerce Commission; accompanied by Paul H. Lamboley; and Andrew J. Strenio, Jr., Commissioners 2
Prepared statement 5
Questions of the Chairman and the answers 13

OVERSIGHT OF THE MOTOR CARRIER SAFETY ACT OF 1984

TUESDAY, OCTOBER 29, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:36 a.m., in room SR-253, Russell Senate Office Building, Hon. John Danforth (chairman of the committee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member, and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Good morning. The committee will conduct its first oversight hearing on the implementation and effectiveness of the Motor Carrier Safety Act of 1984.

Motor carrier safety is a serious problem. In 1984, more than 37,000 truck accidents were reported to the Department of Transportation's Bureau of Motor Carrier Safety. These accidents resulted in nearly 2,800 fatalities and almost 30,000 injuries. Even more alarming is the fact that truck accidents jumped 18 percent between 1983 and 1984. Intercity bus accidents have always been far less numerous than truck-related incidents, but safety in the bus industry also is a serious matter of concern.

This legislation was enacted to address our Nation's major motor carrier safety problem. While the Motor Carrier Safety Assistance Program established in the Surface Transportation Assistance Act of 1982 was a positive step forward in efforts to improve safety, it was clear that much more needed to be done to deal effectively with motor carrier safety.

Prior to 1984, the penalty system for safety violations was unrealistic and ineffective. There was no assurance that motor carrier equipment was inspected with meaningful frequency and in many cases State safety regulations conflicted with Federal standards, which in turn created operating difficulties for interstate carriers.

These issues were addressed by the 1984 act, which provided a comprehensive strengthening of the Federal and State motor carrier system. In addition, the legislation required the Department of Transportation to study various important safety issues such as truck occupant protection, heavy truck safety and health hazards to which truck drivers are exposed.

I look forward to hearing from our witnesses today about the implementation of this act to date and about other initiatives being

undertaken by Government, labor, and the motor carrier industry to improve motor carrier safety.

Senator Ford, do you have any statement?

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Mr. Chairman, I do not have a written statement. I want to compliment you on holding the hearings today. I have found that there is a great deal of interest in safety. I see a move toward improvement as it relates to the American Trucking Association and others. So I am pleased that you are holding the hearing today and look forward to participating as much as I can.

Senator Hollings hopes to be here, but I have a written statement from him.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

This is the first oversight hearing since the passage last year of the Motor Carrier Safety Act. This act was the result of many months of careful deliberations on the issue of motor carrier safety and represents a major legislative effort to enhance motor carrier safety. I look forward to today's testimony on the implementation of this act and on motor carrier safety in general.

I cosponsored this legislation because I believe that motor carrier deregulation and the allowance for bigger trucks have necessitated that more attention be paid to strengthening the Federal safety program and coordinating safety regulation and enforcement at all levels. The Motor Carrier Safety Act responds to these concerns by providing for a more comprehensive Federal regulatory scheme, strengthened enforcement through inspection standards and a broadened penalty structure, and more uniformity among Federal, state, and local regulations.

Today I will be interested in learning about the progress in implementing this act through the ongoing proceedings on safety fitness, equipment and driver regulations, and inspection standards, and the efforts toward compiling and reviewing state and local safety laws. In addition to these governmental efforts, I am particularly encouraged by the private-sector initiatives being undertaken by industry and other interested parties with respect to training, information gathering and dissemination, and self-policing.

However, I am concerned about the increase in motor carrier safety accidents between 1983 and 1984. We must examine the cause for this increase and search for ways to ensure that this does not become the trend. In this regard, I am particularly interested in the views of the various witnesses on improved inspection procedures, the idea of a national commercial driver's license, and any other proposals that the witnesses might have on improving motor carrier safety.

The CHAIRMAN. Thank you, Senator Ford.

First we have Reese Taylor, Chairman of the Interstate Commerce Commission and other Commissioners, and also Mr. Richard Landis, Associate Administrator for Motor Carriers, Federal Highway Administration, U.S. Department of Transportation. Gentlemen, thank you very much.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY PAUL H. LAMBOLEY; AND ANDREW J. STRENIO, JR., COMMISSIONERS

Mr. TAYLOR. Thank you, Mr. Chairman. If I may, let me begin by introducing my two colleagues who are at the table with me this morning. On my immediate right is Commissioner Paul Lamboley and on his right is Commissioner Andy Strenio. Mr. Landis has asked us to go ahead first, so I will proceed.

We do appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission regarding the impor-

tant subject of motor carrier safety. Although the Commission no longer has direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of this agency, and we make every effort to ensure that carriers which receive Commission authority will operate in a safe manner. In my testimony today, I will discuss the Commission's current procedures for determining the safety fitness of applicants for operating authority and the steps we are taking to implement the safety fitness provisions of the Motor Carrier Safety Act of 1984.

First, let me describe our present procedures for determining whether applicants for motor carrier authority have demonstrated that they are fit with respect to safety. Since the Bureau of Motor Carrier Safety, BMCS, within DOT has primary responsibility in the safety area, cooperation between our agencies is essential when the Commission is examining an applicant's fitness for operating authority. In the fall of 1982, former Secretary Lewis and I signed a new memorandum of understanding and agreement which formalized arrangements for the sharing of information and participation by DOT in safety-related fitness and revocation proceedings before the Commission.

Under this agreement, the Commission requests the safety ratings of applicants from BMCS before making a determination of fitness. If an applicant for temporary authority has an unsatisfactory safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which we determine outweighs the safety consideration. I might add that this would seldom happen. It would have to be a real emergency with absolutely no other alternatives.

Applications for permanent authority are handled somewhat differently. If BMCS is not satisfied as to the safety fitness of a carrier applying for permanent authority, it can petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance, OCCA, can also raise the issue of safety fitness and ask BMCS to assist in presenting safety evidence to the Commission. In evaluating the fitness of applicants with records of past safety violations, the Commission has observed a well-defined and consistent set of factors to predict future safety compliance.

Now, as you know, section 215 of the act requires the Department of Transportation, in cooperation with the Interstate Commerce Commission, to conduct a rulemaking proceeding to establish a procedure for determining the safety fitness of owners and operators of commercial motor vehicles. In addition, section 215(d) provides that, if an applicant for motor carrier operating authority does not meet the new safety fitness requirements, the Commission must find the applicant unfit and deny the application.

The Commission has taken a number of steps to implement these provisions of the new safety legislation. Members of the Commission staff have participated in a series of meetings with the staff of the Bureau of Motor Carrier Safety concerning the safety fitness certification procedures and interagency coordination of the revised standards. At the request of BMCS, the motor section of the Commission's Office of Proceedings submitted on May 15, 1985, informal comments to a draft notice of proposed rulemaking implement-

ing the safety fitness rating provisions of section 215. On October 16, 1985, again at the request of BMCS, the Commission's Office of Compliance and Consumer Assistance was asked to comment on a revised draft of DOT's notice of proposed rulemaking, and yesterday OCCA's comments were delivered to BMCS. We will continue to consult with the Department of Transportation as this rulemaking is developed further.

Moreover, the Office of Proceedings has conducted a thorough evaluation of Commission licensing and fitness regulation, procedures, and application materials to identify those rules and practices that must be revised to conform with the new safety certification procedures. This evaluation has been reviewed by OCCA. Actual revision of Commission regulations and practices will occur following DOT's implementation of final rules regarding the safety fitness certification procedures mandated by the act.

The Commission also recognizes that its safety fitness responsibilities do not necessarily end with the granting of a certificate to operate as a motor carrier. A continuing safety monitoring system presently is in place under the 1982 memorandum of understanding and agreement between the Commission and DOT.

We would request, Mr. Chairman, that a copy of this memorandum be made a part of the record. It provides that BMCS may petition the Commission to revoke or suspend the operating authority of a carrier determined to have violated a safety compliance order. Presumably, the enhanced safety monitoring conducted under safety fitness standards mandated by the Act will permit the Commission to continue to rely principally on BMCS to petition for revocation of the authorities of non-compliant carriers.

In closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on our nation's highways. As we move toward a more competitive environment for the trucking industry we must, it is absolutely essential, remain committed to doing all that we can to ensure that carriers operating under Commission authority continue to provide transportation that is safe as well as economical.

I thank you again for this opportunity to present the Commission's views. I do not know whether my colleagues have anything that they would briefly like to add. Perhaps they do, and then after that and Mr. Landis' presentation, we will be happy to answer your questions.

The CHAIRMAN. Thank you. Gentlemen?

Mr. LAMBOLEY. Thank you, Senator. I would simply like to join in Chairman Taylor's remarks and add emphasis to our commitment to motor carrier safety in the public interest.

Mr. STRENIO. Thank you, Senator. I would just like to add that maintaining motor carrier safety is, as has been stated, an extremely important task that requires continual attention from all of those in positions of authority. Of course, the common goal of safety will be best achieved if the private sector also plays its part vigorously. Thus, it is encouraging to note signs that the companies and workers in the motor carrier industry and their customers are intent upon meeting this challenge.

As always, we remain committed to working with this Committee and its staff to promote safe operations on the nation's highways. Thank you.

The CHAIRMAN. Thank you.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

I appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission regarding the important subject of motor carrier safety. Although the Commission no longer has direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of this agency, and we make every effort to ensure that carriers which receive Commission authority will operate in a safe manner. In my testimony today, I will discuss the Commission's current procedures for determining the safety fitness of applicants for operating authority and the steps we are taking to implement the safety fitness provisions of the Motor Carrier Safety Act of 1984.

First, let me describe our present procedures for determining whether applicants for motor carrier authority have demonstrated that they are fit with respect to safety. Although entry into the trucking industry has been liberalized under the provisions of the Motor Carrier Act of 1980, the willingness and ability to conduct safe operations has remained an important element of the fitness test that all applicants for motor carrier authority must satisfy in order to receive a certificate. Since the Bureau of Motor Carrier Safety (BMCS) within DOT has primary responsibility in the safety area, cooperation between our agencies is essential when the Commission is examining an applicant's fitness for operating authority. In the fall of 1982, former Secretary Lewis and I signed a new Memorandum of Understanding and Agreement which formalized arrangements for: (1) sharing of information; (2) availability of direct computer access by Commission staff to DOT safety data; and (3) DOT participation in safety-related fitness and revocation proceedings before the Commission.

The Memorandum was the result of extensive efforts to coordinate the activities of our agencies in this area.

Under this agreement, the Commission requests the safety ratings of applicants from BMCS before making a determination of fitness. If an applicant for temporary authority has an "unsatisfactory" safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which we determine outweighs the safety consideration. If the safety rating is "conditional" or reflects "insufficient information", the Commission may grant the operating authority, and may condition the grant upon compliance with applicable safety regulations. If it is later found that the carrier is not in compliance with those regulations, BMCS may recommend that we revoke the temporary authority and we may do so without further proceedings.

Applications for permanent authority are handled somewhat differently, and that procedure itself has changed in recent months. Previously, if BMCS was not satisfied as to the safety fitness of a carrier applying for permanent authority, it could petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance (OCCA) could also raise the issue of safety fitness and may have asked BMCS to assist in presenting safety evidence to the Commission. When appropriate, the Commission would assign the application for oral hearing in order to consider the evidence more fully. If questions were not raised regarding an applicant's safety fitness, the Commission would determine the carrier's fitness based on the entire record, including the safety rating obtained from BMCS. In certain limited instances, the Commission granted authority despite an "unsatisfactory" safety compliance rating where the record otherwise presented compelling evidence of the applicant's present conformance with safety standards and future intent to maintain operational fitness. In evaluating the fitness of applicants with records of past safety violations, the Commission observed a well-defined and consistent set of factors to predict future safety compliance:[1] the nature an extent of the applicant's past violations; any mitigating or extenuating circumstances surrounding the violations; whether the applicant's conduct represents a flagrant and persistent disregard of pertinent safety regulations; whether the applicant has demonstrated sin-

[1] See *Associated Transport, Inc., Ext.—T.V.A. Plant*, 125 M.C.C. 69, 73 (1976).

cere efforts to correct past safety violations; and whether the applicant is willing and able to comport in the future with the statute and applicable regulations.

Any applicant with an "unsatisfactory" BMCS rating was required to introduce highly persuasive evidence concerning each of these factors in order to satisfy the Commission of its overall safety fitness. In those limited instances where applicants were able to surmount "unsatisfactory" BMCS ratings with other safety assurances, the Commission often granted only limited-term authority as a precaution to allow monitoring of the involved carriers' prospective safety compliance.

This approach to licensing and the safety-fitness determination has undergone review by the Commission in recent months and certain procedural changes have been made in anticipation of the implementation of the Motor Carrier Safety Act of 1984. As you know, section 215 of the Act requires the Department of Transportation, in cooperation with the Interstate Commerce Commission, to conduct a rulemaking proceeding to establish a procedure for determining the safety fitness of owners and operators of commercial motor vehicles. In addition, section 215(d) provides that, if an applicant for motor carrier operating authority does not meet the new safety fitness requirements, the Commission must find the applicant unfit and deny the application.

Consistent with the safety objective these statutory changes seek to promote, OCCA has been directed to bring to the Commission's attention all applicants with "unsatisfactory" safety ratings, regardless of whether DOT seeks to intervene in the proceeding. When the rating is based on a recent safety management audit, the Commission can proceed to its safety-fitness determination, based on information OCCA has obtained from BMCS about the audit. Considerable weight is now placed on the rating itself so the Commission, in recent months, has not granted even limited-term authority to applicants with "unsatisfactory" safety ratings.

When the applicant's "unsatisfactory" rating is based on a dated safety management audit, the Commission will seek more current evidence of safety performance before making a safety-fitness determination. Thus, even if the applicant is otherwise fit and has demonstrated a public need for the proposed service, any grant of authority will be conditioned upon applicant demonstrating that its safety performance is no longer unsatisfactory. The applicant will not be issued a certificate or permit and cannot operate under the authority sought until he has obtained an upgraded safety rating from BMCS or presented compelling reasons why he should be found fit despite the "unsatisfactory" safety rating. Compelling reasons would include ministerial error by BMCS or an inability over an extended period to secure an audit of the upgraded operations that applicant asserts are now safe. BMCS and OCCA would have an opportunity to challenge any evidence presented by applicant. To date under this procedure, compelling reasons have not been found in any of the cases and authority has not been issued in the absence of an upgraded safety rating.

This approach to licensing is now favored by the Commission because it promotes both safety and efficient management of the Commission's caseload. Furthermore, it is an interim procedure that is consistent with the objectives of the Motor Carrier Safety Act.

In addition to adopting this interim procedure, the Commission has taken other steps in preparing to implement the provisions of the new safety legislation. Members of the Commission staff have participated in a series of meetings with staff from the Bureau of Motor Carrier Safety concerning the safety fitness certification procedures and interagency coordination of the revised standards. At the request of BMCS, the Motor Section of the Commission's Office of Proceedings has submitted informal comments to a draft notice of proposed rulemaking implementing the safety fitness rating provisions of section 215. We will continue to consult with the Department of Transportation as this rulemaking is developed further.

Moreover, the Office of Proceedings has conducted a thorough evaluation of Commission licensing and fitness regulations, procedures, and application materials to identify those rules and practices that must be revised to conform with the new safety certification procedures. This evaluation has been reviewed by the Office of Compliance and Consumer Assistance and has been revised in response to specific safety monitoring concerns raised by that Office. Actual revision of Commission regulations and practices will occur following DOT's implementation of final rules regarding the safety fitness certification procedures mandated by the Act.

Some concern has been expressed regarding the role of unverified affidavits in safety fitness determinations and in appeals of adverse safety fitness findings by the Commission under the new procedures required by the Act. Our preliminary implementation discussions with BMCS, as well as our advance review of the safety regulations being formulated by DOT, confirm that pre-licensing safety certification and successful appeals of adverse safety fitness findings will require confirmation assur-

ances from BMCS of safety fitness information and cannot be premised on an applicant's assertion alone.

In the case of existing carriers seeking expansion of their authority, this information may be verified by reference to the computerized BMCS reporting system, readily accessible to the Commission. First-time applicants with no existing interstate operating authority—and presumably no established safety rating with BMCS—will be required to apply for a provisional safety rating prior to seeking ICC authority. In either instance, the Commission will not be able to act upon a licensing request prior to receiving BMCS assurance that the involved applicant has not been accorded an "unsatisfactory" fitness rating.

The Commission will entertain appeals of adverse safety fitness findings that have prevented the issuance of operating authority. Basic Commission policy has been that fitness inquiries in licensing proceedings are pospective in nature and not punitive, and this policy will continue under the new safety fitness standards. Consistent with the purpose of the Act, adverse fitness findings will be considered inducements to improved safety and, thus, will be appealable on the basis of corrective action on the part of applicants. However, as in the case of initial applications, we cannot make a favorable fitness determination on the basis of an applicant's affidavit alone. Successful appeals on the safety fitness issue must contain direct assurances from BMCS that factors contributing to a prior "unsatisfactory" safety rating have been rectified. We anticipate that, generally, to obtain such assurances applicants will have been evaluated in a follow-up BMCS safety audit or will have resubmitted their request for a provisional safety rating.

The Commission recognizes that its safety fitness responsibilities do not necessarily end with the granting of a certificate to operate as a motor carrier. A critical aspect of the Act's safety structure is the subsection 215(a)(1) requirement subjecting motor carriers to "specific initial and continuing requirements . . . to prove safety fitness" (emphasis added). This implies a collaborative oversight of carrier safety fitness ratings by the Commission and DOT to ensure that the safety compliance standards initially imposed on motor carrier applicants are sustained throughout the course of their service to the shipping public.

A continuing safety monitoring system presently is in place under the 1982 "Memorandum of Understanding and Agreement" between the Commission and DOT. It provides that BMCS may conduct proceedings against carriers found to be in violation of the Federal Motor Carrier Safety Regulations. These proceedings may result in compliance orders binding the respondent carrier to safety performance requirements. The Memorandum also provides that BMCS may petition the Commission to revoke or suspend the operating authority of a carrier determined to have violated a safety compliance order. Presumably, the enhanced safety monitoring conducted under the safety fitness standards mandated by the Act will permit the Commission to continue to rely principally upon BMCS to petition for revocation of the authorities of non-compliant carriers. Where such a petition for revocation has not been introduced, however, the Commission may be alerted to a carrier's unacceptable safety record by other means—for example, by complaint of a shipper or competing carrier. Upon verification of such information by BMCS, the Commission would consider instituting revocation proceedings on its own motion, consistent with the provisions of 49 U.S.C. 10925.

In closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on our nation's highways. As we move toward a more competitive environment for the trucking industry, we must remain committed to doing all that we can to ensure that carriers operating under Commission authority continue to provide transportation that is safe, as well as economical.

Thank you again for this opportunity to present the Commission's views in this matter. Now, I would be glad to answer any questions you may have.

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

Between

THE DEPARTMENT OF TRANSPORTATION

and

THE INTERSTATE COMMERCE COMMISSION

In the interest of assuring cooperation in providing for safe, adequate, economical, and efficient transportation of persons and property by commercial motor vehicle, particularly in the interest of necessary and comprehensive regulation of motor carrier safety and the safe transportation of hazardous materials, the Department of Transportation (DOT) and the Interstate Commerce Commission (ICC) agree as follows, subject to their respective statutory authorities. The execution of the terms of this agreement on behalf of the DOT will be through the Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS). Wherever reference is made to BMCS it is intended to bind the DOT.

I. Motor Carrier Safety Fitness Ratings

a. BMCS will provide ICC with an initial safety rating for all motor carriers seeking operating authority from the ICC. A description of those ratings is attached as an Appendix to this Memorandum of Understanding and Agreement.

b. The ratings will be included in the BMCS Management Information System and accessible through computer terminals linked to the System. The ICC, through its installed terminals at its headquarters and regional offices, will be linked to the BMCS System at no cost or expense to BMCS. The ICC requests for safety compliance ratings of all carrier applicants for temporary or permanent authority will henceforth be initiated through the computerized Management Information System at no cost to ICC.

c. If there is a prolonged operational shutdown of the computerized system, the ICC office requiring the rating information may initiate the request by telephone to the BMCS Headquarters, in Washington. Upon proper identification of the requester, the rating will be determined by manual review of the carrier's file and provided as soon as practicable.

d. The ICC shall maintain an accurate record of the number of requests made for safety ratings, and shall transmit the totals monthly to BMCS.

e. Written confirmation of all "unsatisfactory," "conditional," or "insufficient information" ratings under paragraph "b" above can be obtained by telephoning a request to BMCS Headquarters in Washington.

II. Fitness Determinations and Grants of Authority

a. Temporary Authority

1. Before finding a carrier fit to operate in interstate commerce, the ICC shall request a safety rating from BMCS concerning that carrier.

2. If the BMCS rating is "unsatisfactory," operating authority will not be issued by the ICC unless there is a particularly urgent transportation need determined by the ICC to outweigh safety considerations.

3. If the BMCS rating is "conditional" or "insufficient information," the ICC may grant the operating authority. The ICC may impose conditions including compliance with the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations (HMR). In the event of noncompliance with these regulations, BMCS may submit a recommendation to the ICC for revocation of temporary authority, and the ICC may revoke the authority without further proceedings.

b. Appeals from Regional Motor Carrier Board Decisions

1. When a carrier applicant files an appeal from a Regional Motor Carrier Board decision denying temporary authority for reasons of applicant's safety record, the ICC will immediately provide a copy of the appeal to BMCS for comment and recommendation.

2. Upon receipt of the appeal, BMCS will:

(a) Review the claims made by applicant on the appeal.

(b) Verify the accuracy of its initial rating.

(c) Provide comments and recommendations to ICC which may include:

i. Results of a new safety audit of the carrier's facilities.

ii. Negotiation with the carrier of a compliance agreement upon which a conditional rating may be based.

iii. Refutation of the carrier's claims and justification of the denial of the petition.

iv. Acknowledgement of changed circumstances, or passage of time without evidence of noncompliance, which warrant reconsideration of the denial.

(d) Any comments and recommendations by BMCS will be submitted within the time allowed for replies to appeals under the ICC's Rules of Practice applicable to temporary authority applications, or such other time as the ICC may determine is appropriate in order to meet statutory time limitations. The Commission's decision will be based upon statutory standards irrespective of negotiations.

c. Permanent Authority

1. If BMCS is not satisfied as to the safety fitness of a carrier applicant for permanent authority, it shall, within 45 days from the date the application is published in the Federal Register, file a

petition for intervention setting forth generally the nature of the evidence it will present in support of its position, and shall request an oral hearing.

2. A copy of the BMCS petition will be served upon the applicant by BMCS. Applicant may respond within 60 days from the date the application is published in the Federal Register.

3. If deemed appropriate, the ICC will assign the application for oral hearing, which shall be held as soon as possible.

4. If no petition for intervention is filed by BMCS within the 45-day period following publication, the ICC will determine the carrier's fitness based on its entire record including the safety rating made available through the BMCS Management Information System.

d. Revocations

1. Under its authority, the BMCS conducts Motor Carrier Safety Proceedings against carriers found to be in violation of the Federal Motor Carrier Safety Regulations. These proceedings may result in compliance orders binding the respondent carrier to safety performance requirements.

2. Upon determination by BMCS that a compliance order has been violated, it may petition ICC to revoke or suspend the carrier's operating authority.

3. Proceedings by ICC on BMCS petitions for revocation or suspension will be conducted under the provisions of 49 U.S.C. § 10925 in accordance with ICC Rules of Practice.

e. Hearings.

1. When an application for permanent authority to which BMCS is a party is set for hearing by the ICC, BMCS will be represented by FHWA attorneys.

2. Evidence at such hearings will, to whatever extent practical and consistent with legal requirements of due process, consist of inspection and investigation reports duly authenticated by BMCS, including carrier records, or copies thereof, annexed to reports as exhibits. The intent of this paragraph is to minimize the need for personal appearance by BMCS investigators.

f. BMCS Participation in Hearings at the Request of the Office of Compliance and Consumer Assistance (OCCA).

1. Whenever the issue of safety fitness is raised by the ICC's Office of Compliance and Consumer Assistance (OCCA), BMCS will provide assistance to OCCA in presenting safety evidence to the Commission.

2. The provisions of II(e)(2) above also shall apply to such proceedings.

III. Information Systems

a. ICC and BMCS agree to assist one another in achieving information systems that are complete, accurate, consistent, compatible, and useful.

b. ICC shall have access to the BMCS computerized MIS pursuant to paragraph I above.

c. ICC access will be accomplished through the use of the ICC docket number.

d. ICC shall provide BMCS a hard copy list, which shall be updated weekly, of all changes or additions to its Chaindex information system, i.e., carriers with operating authorities or those seeking such authority, together with addresses, current status, and ICC docket number, at no cost to BMCS.

e. When making inquiry of the BMCS Information Management System concerning carriers, the ICC representative shall note whether an ICC docket number appears. If not, or if the carrier is not otherwise identifiable in the BMCS system, an immediate telephone notification shall be made to the BMCS Headquarters of the name, address, city, state, zip code, and docket number of the motor carrier applicant.

IV. Exchange of Information and Joint Activities

a. When an ICC employee in the course of his or her official duties of examination, inspection, or investigation under ICC authority, discovers matters which are believed to be violations of law within the jurisdiction of DOT, such matters are authorized for communication to the appropriate DOT field office through the appropriate ICC field office.

b. Conversely, where a DOT employee in the course of his or her official duties discovers matters which are believed to be economic violations within the jurisdiction of ICC, such matters are authorized for communication to the appropriate ICC field office in similar manner.

c. Subject to guidelines to be established by our respective organizations, joint examinations, road checks, inspections, or investigations may be authorized for the enforcement of laws relating to transportation.

d. Employees of ICC and DOT who have personal knowledge of facts pertinent to any violation will be made available to testify as to these facts in an enforcement proceeding or other action.

e. The foregoing shall not be considered to vest ICC and DOT employees with any investigative or enforcement authority over functions not within the jurisdiction of their own organization. Moreover, it is understood that ICC and DOT employees shall not be required to specifically examine, inspect, or investigate for violations not within their own jurisdiction, nor shall they exchange any information if that exchange is prohibited by any applicable law, regulation, or executive order. The purpose of this

proposal is to effect a spirit of cooperation so that violations are brought to the attention of the agency possessing jurisdiction.

V. Coordinator

The ICC and DOT will each appoint a coordinator to assure that the procedures described in this agreement are effectively and promptly carried out, and that any requirements for changes in the agreement or procedure established thereunder, and any related changes in programs or policies of DOT and ICC are brought to the attention of their respective agencies.

VI. Previous Agreements

This Memorandum of Understanding and Agreement is intended to supersede and supplant any previous agreements entered into between the two agencies relative to the same subject matter, including the Memorandum Agreement of April 3, 1967, together with amendatory letters thereto, the primary purpose of which was to provide continuity during the transfer of personnel and functions from the ICC to DOT pursuant to Public Law 89-670, creating the Department of Transportation.

FOR THE UNITED STATES DEPARTMENT
OF TRANSPORTATION

Drew Lewis, Secretary — 9/6/82 Date

FOR THE UNITED STATES INTERSTATE
COMMERCE COMMISISON

Reese H. Taylor, Jr., Chairman — 8/23/82. Date

APPENDIX

Standard safety ratings used by the Bureau of Motor Carrier Safety.

1. Satisfactory - records indicate no evidence of substantial noncompliance with safety requirements.

2. Unsatisfactory - records indicate evidence of substantial noncompliance with safety requirements.

3. Conditional - records indicate that carrier was determined recently to have been in noncompliance with one or more safety requirements, and is under review by BMCS.

4. Insufficient Information - there is no current information available to BMCS upon which to base a rating. This rating will automatically be elevated to satisfactory after one year from the date the rating is assigned if it has not, in that time, been changed to unsatisfactory or conditional.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question 1. Section 215 of the Motor Carrier Safety Act of 1984 requires the Department of Transportation and the ICC to establish a safety fitness procedure for commercial motor vehicle owners and operators. Do you think the fitness requirement should be expanded to include specifically carriers not under ICC jurisdiction, such as private carriers?

Answer. Yes, we think private carriers should be required to meet the same safety fitness standards applied to commercial vehicle operators. But of course, such a requirement would be difficult to impose under existing statutes because such carriers are not under the Commission's jurisdiction. The Commission is committed to ensuring that carriers operating under our authority continue to provide safe and economical transportation. In this regard, we would support any effort to ensure the uniformity of safety regulation for all carriers.

Question 2. Section 226 of the 1984 Act requires Mexican carriers operating within U.S. commercial zones along the U.S. Mexico border to obtain a certificate of registration from the ICC showing that the carrier meets U.S. safety and insurance requirements.

(a) Do you think this registration requirement causes any undue hardship for Mexican motor carriers?

(b) Senator Gramm's bill, S. 1252, would modify the provisions of section 226 to make it easier for Mexican carriers to operate in the U.S. commercial zones. Does the Commission have a position on this legislation?

Answer. Although the Congress has heard testimony that Mexican motor carriers find the requirements of Section 226 to be onerous, the Commission has taken every step possible to simplify and expedite the issuance of certificates of registration. For example, in Ex Parte No. MC-5 (Sub-No. 7), the Commission prescribed a new form for insurance reporting for foreign private carriers of nonhazardous commodities. This new form should speed up the issuance of certificates of registration by achieving uniformity in reporting of insurance coverage. In our administration of the statute to date, we have not encountered significant opposition to the law by either Mexican carriers or U.S.-based shippers using Mexican carriers.

The Commission has not yet adopted a formal position on S. 1252. However, the Commission is currently considering the relevant issue of certain commercial zones along the Texas-Mexican border in Ex Parte No. MC-37 (Sub-No. 38), Petition to Establish a Commercial Zone at Cameron, Hidalgo, Starr, and Willacy Counties, Texas.

Question 3. The ability to obtain adequate levels of liability insurance coverage has become a serious problem for trucking and bus companies. In your view, has economic deregulation of the truck and bus industries contributed in any way to the current insurance crisis?

Answer. There is no evidence available now that would suggest that economic deregulation has contributed to sky-rocketing rates and reduced availability of insurance. The Commission has recently instituted a proceeding in Ex Parte No. MC-178, *Investigation Into Motor Carrier Insurance Rates,* to, among other things, determine the causes of this crisis. While Congress is clearly the place where an ultimate solution to the problem must be developed, hopefully, the comments received on the issue of causation will enable the Commission to pinpoint why truck and bus companies face such high rates.

Question 4. Can you suggest any solutions to the motor carrier insurance crisis?

Answer. The Commission does not regulate any part of the insurance industry and has no special expertise in the insurance area. However, as indicated in our prior response, because of the present crisis, the Commission has instituted a proceeding specifically directed to determining, among other things, what action, if any, is appropriate to alleviate the problem. Comments from the public, including insurance industry spokesmen, are expected by December 2, 1985. Hopefully, the Commission will be able to suggest solutions based on the record developed in this investigation proceeding.

The CHAIRMAN. Mr. Landis?

STATEMENT OF RICHARD LANDIS, ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS, FEDERAL HIGHWAY ADMINISTRATION

Mr. LANDIS. Thank you very much, Senator. I am Dick Landis. I am the new Associate Administrator for Motor Carriers. Having been sworn in to that position September 17, I have had the oppor-

tunity to review a lot of the activity that is under way with the Motor Carrier Safety Act of 1984. I am sure you realize that a great deal of my activity right now has been working with the current proceedings to accomplish the reorganization within Federal highways to respond to some of the concerns that have been presented by Congress and by the industry.

I am pleased to be here today to inform the committee that we are making significant progress toward meeting the requirements of the Motor Carrier Safety Act of 1984. I will submit my statement for the record and limit my remarks to a very brief overview.

We are pleased to report that all the activities that are required by the act are being attended to at the present time. In fact, five of the requirements have been completed and are outlined in the testimony. The others are all in various stages of rulemaking effort, and this has turned out to be a very complex process that is taking a great deal of staff time and effort. We are making good progress with the advance notices and now we are at the stage where the notices are prepared and are going through the internal routing process.

As Chairman Taylor indicated, we have been working very closely with ICC on the section 215 requirements for the fitness rating, and that is a continuing activity. We are reviewing a letter, in fact, that came just yesterday with some added suggestions that I think are really worthwhile.

Other areas that we are dealing with are the studies that have been mandated in the act. Those studies are under way. Most of those have been transferred to the National Highway Traffic Safety Administration and are being worked on.

A highlight, I think, of the act is that now the Safety Regulatory Review Panel has been named from the candidates submitted by both the House and the Senate. Those people are in place. They met on the 5th of September in an organizational meeting and have been sworn in.

The second piece of that, and a monumental task, was collection of all the rules and regulations from the States. Those have all been submitted now by each State and the District of Columbia. We are beginning the process of trying to commit them to a computerized data base and we are selecting a contractor to do that work now so that the Safety Review Panel can go about its task of reviewing those State regulations.

Though not part of the act, I would like to make a comment about the Motor Carrier Safety Assistance Program [MCSAP] because we are now reaching a point where we are seeing, I think, the results we would like to see. In 1985, 49 States participated in the program; 28 States were implementation States. This year, after reviewing the 1986 enforcement plans, we see 45 States and 5 territories participating, with 36 States and 1 territory in the implementation stage.

It is clear from the requests that we received from the States, that they are now ready to be active in the MCSAP Program, to build up and add to their programs, and use the Federal funds that we are providing. We are certainly looking forward to full funding, hopefully, of the MCSAP Program next year, and the other area

that we are going to be talking about is the contract authority so that we have continuity of the program.

As far as MCSAP, one other point is that we are in a reorganization within the Bureau of Motor Carrier Safety to give emphasis to the MCSAP Program and give better service to the States.

Again, I am very pleased to be here. I would be more than happy to entertain questions.

[The statement follows:]

STATEMENT OF RICHARD P. LANDIS, ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS, FEDERAL HIGHWAY ADMINISTRATION, DOT

Mr. Chairman and members of the committee, good morning. My name is Richard P. Landis and I am the Associate Administrator for Motor Carriers, a position recently established within the Federal Highway Administration (FHWA) to serve as a primary focal point in the Department of Transportation for all motor carrier transportation matters. This position is the result of a new organizational arrangement within the Department designed to provide a high level point of access for the trucking industry and the public to make known their views on significant motor carrier issues. As Associate Administrator for Motor Carriers, I am directly involved in the development of proposed legislation, regulations, and procedures necessary to carry out the Department's responsibilities pertaining to motor carrier transportation. The Bureau of Motor Carrier Safety (BMCS) has been placed under my jurisdiction. The first order of business under this reorganization was to establish direct line authority over its field offices and revise the structure of BMCS. We are confident that these organizational changes address the principal concerns of the Congress, the motor carrier industry, and others concerning the administration of the agency's motor carrier and motor carrier safety programs.

I am very pleased to appear before this Committee to discuss the important task of implementing the Motor Carrier Safety Act of 1984 (Public Law 98-554, Title II) (the Act). The Department certainly shares this Committee's interest in promoting the safe operation of commercial motor vehicles on this Nation's highways. Minimizing work-related dangers to the health and safety of drivers and other motor carrier employees and, in fact, the public, has long been a concern to us. Increased compliance with commercial motor vehicle safety laws and regulations has been and will always be a major concern. My testimony here today will speak to the positive action being taken to ensure increased compliance with those laws and regulations. We are certain that Congressional wisdom in enacting this legislation will allow all parties concerned to take a giant step toward regulatory uniformity and resultant reduction of truck and bus involved accidents.

The Secretary of Transportation has been directed to reissue the Federal Motor Carrier Safety Regulations (FMCSR) within 18 months of enactment of the Act. These regulations are to be minimum standards that will ensure that (1) commercial motor vehicles are safely maintained, equipped, loaded, and operated; (2) the responsibilities imposed do not impair the ability of drivers to operate their vehicles safely; (3) the driver's physical condition is adequate to enable them to operate commercial motor vehicles safely; and (4) the operation of the commercial motor vehicles does not have deleterious effects on the physical condition of the drivers. Presently, the Department has under consideration nine rulemaking actions. These include Notices of Proposed Rulemaking (NPRM) regarding Part 391, Qualifications of drivers, Part 399, Employee safety and health standards, Part 395, Hours of service of drivers, and a final rule addressing Part 394, Notification and reporting of accidents which are being reviewed within the Department. NPRMs addressing other fine parts of the Federal Motor Carrier Safety Regulations (FMCSR) are being researched and drafted. It is our intention to meet the 18-month deadline.

The Act provided for the submission of all state laws and regulations pertaining to commercial motor vehicle safety to the Secretary and the Commercial Motor Vehicle Safety Regulatory Review Panel. A notice, requesting the State's laws and regulations, was published in the Federal Register on February 22, 1985 (50 FR 7357). Simultaneously, the Secretary sent a similar personal request to the Governors of the 50 States and the Mayor of the District of Columbia. The laws and regulations from all the jurisdictions requested have been submitted and received. Pursuant to section 209 of the Act, the Commercial Vehicle Safety Review Panel was appointed by the Secretary from lists of candidates submitted by the House and the Senate. A swearing in and organizational meeting was held on September 5 of this year.

The Secretary, with the assistance of the Regulatory Review Panel, will review all State commercial motor vehicle safety laws and regulations. Based on the recommendations of the Panel, the Secretary will make a determination of whether preemption is called for under the Act. We are now in the process of developing a computer program and an extensive data base to facilitate the expeditious and thorough review and continued monitoring of State laws and regulations required by section 208 of the Act. A research Request for Proposal (RFP) was prepared and published in the Commerce Business Daily. The closing date for submission of the proposals was October 12, 1985. We anticipate actual work will begin in early December of this year. Once the data base has been established and the software is in place, we will have the only automated national data base containing an inventory of laws pertaining to commercial motor vehicle safety. We envision the use of this automated data base by Federal and State authorities through a nationwide telecommunications network. This program, coupled with an interpretations data base of Federal regulations pertaining to commercial motor vehicle safety and hazardous materials transportation which will also be available nationally, will not only advance regulatory uniformity but will surely lead to increased compliance.

The Act requires the establishment of Federal standards for annual, or more frequent, inspections of commercial motor vehicles for compliance with 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation, and the retention of such inspection records by the motor carrier companies. We are in the process of establishing these Federal standards through notice and comment rulemaking. An advanced notice of proposed rulemaking (ANPRM) was published in the Federal Register last January, and the Department is currently reviewing a NPRM. Issuance and publication in the Federal Register is required 1 year after rulemaking is initiated. A NPRM proposing revision of 49 CFR Part 393, Parts and accessories necessary for safe operation, is also in concurrence channels within the Department.

The Act calls for timely investigation of any nonfrivolous, written complaint alleging a substantial violation of the FMCSR. To comply with this requirement, the BMCS issued, in May of this year, a new chapter for inclusion in the Motor Carrier Safety Training Text—Chapter 10, Complaint Investigations. This chapter sets forth, in specific detail, instructions calling for timely investigations and reports and confidentiality protection of the identity of complainants.

The Secretary of Transportation was directed to consult with the Interstate Commerce Commission (ICC) and establish a new safety fitness procedure for owners and operators of commercial motor, including existing motor carriers as well as new entrants.

The safety fitness rating procedures are to include (1) initial and continuing requirements to be met by motor carriers to prove their safety fitness; (2) a means to determine whether such persons meet the safety requirements; and (3) specific deadlines for action by the Department and the ICC in making safety fitness determinations. The Act established a 1-year time frame for the accomplishment of this task, and the submission of a copy of the procedure to Congress. We have been diligently pursuing this objective.

The ICC, as part of the licensing procedure, is agreeable to requiring new applicants to obtain a provisional safety rating from the DOT. Under such an arrangement, if issued as final rules, carriers already of record, who have not been rated, would be required to file a "Declaration of Safety Fitness" with the DOT to obtain a provisional safety rating. This mechanism would result in requests from new entrants for provisional safety ratings, which would be made by a multipage submission in the form and manner prescribed by DOT. The process would require new entrants to supply information which will enable us to assess safety fitness and assign a provisional rating. Procedural rules, promulgated by each agency, will establish the time frames for handling such requests and for action by DOT and ICC.

The procedural rules will be issued under the provisions of the Administrative Procedures Act, with opportunity for public comment. A draft NPRM has been developed and coordinated with the ICC. It is currently undergoing internal review by the DOT and will then be sent to the Office of Management and Budget as required by DOT rules and Executive Orders governing rulemaking.

The Secretary is to publish regulations requiring motor carriers of passengers domiciled in contiguous foreign countries to carry proof of financial responsibility coverage on board each motor vehicle entering the United States. A final rule on this matter was published in the Federal Register (50 FR 7061) on February 20, 1985. The Department has also sent letters to each foreign motor carrier of record advising them of this regulation, which became effective on the date it was published.

Various sections of the Act require that studies be made and reports on each study be submitted to the Congress.

The "Penalties Study" requires us to study and make recommendations to the Congress on the effectiveness of civil and criminal penalties established pursuant to the Act deterring violations of commercial motor vehicle regulations and in effectively prosecuting such violations when they occur. The FHWA has published a Request For Proposal for this study. Two proposals were received and are being reviewed at the present time. We expect to award a contract in the near future. We are on target with the 2-year mandated time frame.

The "Heavy Truck Study" which requires a comprehensive study of safety characteristics of heavy trucks has been assigned to the National Highway Traffic Safety Administration (NHTSA) by the Secretary. Section 216 directs the Secretary to undertake a comprehensive study of the safety characteristics of heavy trucks, the unique problems related to heavy trucks, and the manner in which such trucks are driven. The Department has completed its work plan, and already has contract efforts underway to examine the specific problems directed by the section: handling, braking, stability, crashworthiness, and driver performance. The plan of the study will be to review the State and Federal accident files for all relevant data, to synthesize everything that is known on these subjects from engineering studies and other pertinent sources, to cross-check the data, and to make findings and recommendations for future research. We will solicit a broad range of opinion on these subjects through public symposia and written comments, as it prepares its report. Our schedule calls for completion of the study of September 30, 1986, the date specified in section 216.

The NHTSA has also been assigned the "Truck Occupant Protection Study." This study will examine potential and known hazards to truck occupants and the means for improving truck-occupant safety. Section 217 directs the Secretary to study crash protection for truck occupants, by examining potential and known hazards and the means for improving safety for truck occupants. Particular problems to be examined include the incidence of fires in heavy vehicle crashes, the ejection of occupants during crashes, the crushing of the cab, and the hazards presented by the interior of the cab. Contract efforts are also underway on this study, which we expect to complete by October 30, 1986, the end of the two-year period specified in the statute.

The "Study of Safety Performance of Commercial Motor Vehicles" requires examination of the effectiveness of State regulations governing the operation of such vehicles in promoting safety. We must also investigate the need to subject those operations to Federal requirements. We do not expect any problems in reporting to the Congress on the results of this study within the prescribed time (2 years after enactment).

The Secretary has assigned the "Study of Safety Related Devices" to the NHTSA. Section 219 directs the Secretary to study the effectiveness of the regulations regarding the emergency warning devices required to be carried on large commercial vehicles. An investigation of potential costs and benefits of requiring passenger automobile operators to carry emergency warning devices will be made. At this time, the Department is developing a study method to assess the effectiveness of the warning devices. The method will seek to overcome the lack of accident data in which the performance of the warning devices is known to have been a factor.

The study on significant health and safety hazards to which individuals engaged in the operation of commercial motor vehicles are exposed is being conducted by the Department in consultation with the National Institute for Occupational Safety and Health and the Secretary of Labor. We expect to complete this study within the 1-year time-frame established by the Act.

Section 228 of the Act amended the definition of "employee" in section 401 of the Surface Transportation Assistance Act of 1982 so that bus drivers can be covered by the employee protection provision of that Act administered by the Department of Labor. The amendment is scheduled to become effective on the 730th day after enactment. This section also required the Secretaries of Transportation and Labor to study and to report to Congress within 1 year on the need for that change. A draft report on the study is being reviewed by both Departments and a final report will be submitted to Congress in the near future.

MOTOR CARRIERS SAFETY ASSISTANCE PROGRAM

In recognition that motor carrier safety and hazardous materials transportation safety are mutual responsibilities of the Federal and State Governments, we have concentrated our efforts in increasing State involvement in the Motor Carrier Safety Assistance Program (MCSAP), rather than expanding the direct Federal pro-

gram. The MCSAP, authorized by the STAA of 1982, is a cooperative endeavor between the Federal Government and States to promulgate and enforce uniform Federal and State safety and hazardous materials regulations applicable to all commercial motor vehicles and their drivers. One of the criteria a State must meet in order to qualify for an implementation grant is that the State adopt and enforce the Federal Motor Carrier Safety Regulations or similar State rules that are compatible with these Federal regulations. The objective of the program is to reduce truck and bus involvement in highway accidents by minimizing the hazards associated with large commercial motor vehicles being operated on the Nation's highways.

Fiscal year 1985 was the first full year of the MCSAP. Forty-nine States are now participating in the program, 28 in the implementation phase. The principal implementation activity is focusing on the area of recruitment, hiring, and training of State enforcement personnel. In order to ensure national uniformity and increased compliance, existing State enforcement personnel, in addition to those recruited as a direct result of MCSAP, are being trained in the National Driver Vehicle Inspection Procedures utilized in the roadside inspection activity. Approximately 1,500 officers will have received training during the past fiscal year. A cadre of 490 man years of MCSAP funded personnel activity has performed an estimated 300,000 inspections over and above the inspections that would have been performed by the statutorily required base-year State level of activity.

We currently are evaluating the State plans for fiscal year 1986. Forty five States and 5 territories have applied for funding, 36 States and 1 Territory in the implementation phase. The funding for fiscal year 1986 depends on the outcome of conference action on DOT's appropriations bill, but we expect it to be higher than the 1985 level. Moreover, we expect an increase in production activity over that of fiscal year 1985. This will be primarily attributable to increased learning and efficiency of the current MCSAP sponsored personnel.

State grantees are also participating in the development of a Management Information System (Safety Net) designed to compile improved roadside inspection and enforcement data. As States begin to use this data information system, the States and Federal agencies will be able to factor State inspection report data into safety management audit selecton critiera. The tens of thousands of State inspections will provide a much larger data base on motor carrier noncompliance than the Department presently is using for interstate carriers. This will also give the States a similar capability for intrastate operations.

This concludes my prepared statement. I would be pleased to respond to your questions or provide additional material for the record to clarify or amplify the steps that we are taking to further improve our motor carrier program.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question. The State of Connecticut requires truck drivers to obtain permits in order to operate twin trailers in that State despite the fact that the Surface Transportation Assistance Act of 1982 authorized the use of such equipment nationwide on Interstate and other designated highways. To compound this problem, the State of Pennsylvania prohibits truck drivers operating there from having permits from more than one State. This has created serious operational difficulties for trucking companies and drivers. What is the Department doing about this situation?

Answer. We understand that the use of the word "permit" in the above question refers to a license to operate twin trailers. Secretary Dole is actively encouraging States to adopt procedures leading to a single and classified license system. A single license means that a driver will not be allowed to obtain a driver's license from more than one State. This is designed to get unsafe drivers off the road by ensuring that a driver whose license is revoked in one State does not continue to drive using a license issued by another State. A classified license is one that restricts permission to operate a vehicle only to those vehicles that the driver is qualified to operate. Any classified license system that is implemented should be done through the single State that issued the license and could not have the effect of prohibiting the operation of twin trailers. DOT is aware of the Connecticut and Pennsylvania requirements and is monitoring the situation closely.

Question. The Motor Carrier Safety Act of 1984 requires DOT to review the current Federal Motor Carrier Safety Regulations and make improvements in these regulations. Is the Department committed to strengthening the federal motor carrier safety standards, or are there regulations you are considering weakening?

Answer. The Secretary has expressed her personal interest in the review of the motor carrier safety regulations with a view toward strengthening the requirements which improve truck safety. The review has indicated the probable need for enhancements in several parts of the regulations. For example, we are considering more stringent qualifications for drivers who transport certain hazardous materials. Regulations concerning the vehicle and the safety accessories have been reviewed and consideration is being given to increasing the requirements relative to axles and attaching parts, brake systems, frames and frame assemblies, lights, steering systems, suspension systems, wheels and rims, and fuel systems. The changes proposed in our vehicle-in-use standards will be consistent with the performance requirements set for new vehicles in the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration. The inspection requirements will also be strengthened.

Question. Section 215 of the 1984 Act required DOT and the Interstate Commerce Commission to establish a safety fitness procedure for new and existing motor carriers. The Act requires submission of this procedure to Congress by October 30, 1985. When will we be receiving a copy this procedure?

Answer. The procedure for establishing safety fitness ratings for all motor carriers operating in interstate and foreign commence, including new applicants to the Interstate Commerce Commission for operating authority, is contained in a notice of proposed rulemaking (NPRM) entitled "Safety Fitness Determination." The NPRM is in the final drafting and approval stage. Upon approval, the NPRM will be published in the *Federal Register* and interested parties will be affored 45 days to submit their comments to the Bureau of Motor Carrier Safety. It is presently anticipated that the final rule will be published in the *Federal Register* next year. You will be furnished with a copy of the NPRM and the final rule immediately upon issuance.

Question. Under the procedure being developed, to what extent will the safety information provided by motor carriers be verified by the Department?

Answer. The method used to verify the safety information provided by motor carriers is one of the issues that will be open to comment in our rulemaking. At this point, we are considering proposing verification of this information through Federal and State safety management audits, the results or roadside driver/vehicle inspections by State enforcement personnel, and the review of motor carrier accident reports.

Question. In your view, should the safety fitness procedure be expanded to include specifically all carriers, including those without Interstate Commerce Commission operating authority?

Answer. The Department of Transportation has interpreted the intent of Section 215 of the Motor Carrier Safety Act of 1984 to include the safety fitness rating of *all* motor carriers (for-hire and private) operating in interstate and foreign commerce and new applicants to the Interstate Commerce Commission for motor carrier operating authority. We are planning to propose rules covering all interstate, foreign, and new applicant carriers. The issue of coverage will, of course, be subject to the notice and comment rulemaking.

Question. Section 220 of the 1984 Act requires DOT to study the health hazards to which truck drivers are exposed.

a. What types of health hazards are being investigated in this study?

b. When do you expect this study to be submitted to Congress?

Answer. The study addresses the following health hazards: fatigue, stress, noise, vibration, carcinogens, substance abuse, poor ventilation, exposure to exhaust fumes, and contact with hazardous/radioactive cargo.

The report is in final draft form. After final interagency coordination with OSHA and NIOSH and appropriate revision, the report will to into Departmental concurrence channels and should be submitted to Congress within two months.

Question. The 1984 Act requires DOT to perform a study in order to determine if bus company employees should be included in the "whistleblower" provision for trucking company employees in the Surface Transportation Assistance Act of 1982. Do the data you have been examining lead you to believe there is a need for "whistleblower" protection for bus company employees?

Answer. Yes. The apparent reason for extending additional protection to employees of bus companies is that an unsafe condition could affect not only the employees, but would also pose a risk to an additional group, the passengers. An unsafe condition that was permitted to go unreported in a bus could also affect others outside their vehicles. No data showed any reason for not extending the additional protection to employees of bus companies.

Question. Some groups argue that the economic deregulation contained in the Motor Carrier Act of 1980 has led to a deterioration in truck safety. Does the Department's data show any correction between economic deregulation and the safety performance of the trucking industry?

Answer. The data available to the Department does not show a correlation between deregulation and truck safety. The defect and out-of-service rates for regulated (ICC carriers) and unregulated carriers (private and exempt commodity carriers), all of which are subject to safety regulations, have been and remain fairly equivalent. Comparative accident rates are not available due to the absence of good data on annual miles traveled, but the relative share of required accident reports received remains about the same before and after 1980. The safety of carrier operations depends on the level of carrier investment in safety, not whether it is transporting regulated or unregulated commodities.

Question. It has been argued that better enforcement of the current truck and bus insurance requirements by the Interstate Commerce Commission would alleviate the insurance crisis plaguing the motor carrier industry. What is your view of this assertion?

Answer. The minimum standards for financial responsibility apply to all interstate motor carriers of property and all for-hire carriers of passengers, not just those authorized by the ICC. The registration system of the insurance coverage required by the ICC for ICC carriers, and the trigger mechanism for warning, cease and desist orders, and preliminary injunctions utilized by the ICC for the 15% of the carrier population over whom ICC exercises jurisdiction are quite effective in assuring compliance with insurance requirements. Since the ICC does not regulate the other 85% of the carrier population, their enforcement activities could not alleviate the insurance problem facing these entities.

The current insurance crisis is not a phenomenon peculiar to transportation. The capacity shortfall in the insurance industry affects all commercial property and casualty lines. Certainly, the high premiums and difficulty in acquiring insurance have an impact on carrier operations, but the level of ICC enforcement appears to be only a minor factor in the solution to the problem and is not seen as aggravating the problem in any way.

Question. The Motor Carrier Safety Assistance Program appears to be a success. What level of grant requests do you expect from the participating states in fiscal 1986?

Answer. Fiscal Year 1986 applications show that 36 States applied for an implementation grant and 10 have applied for a development grant, with 6 States not participating. We anticipate 4 more development grants which have not yet been received. In contrast, the FY 1985 participation was 28 States in implementation and 21 States in development.

Question. Will the program have sufficient funding to cover these requests?

Answer. The total Federal funding requested by States in their FY 1986 applications amounts to $24,650,559. We do not yet have a final appropriations act for 1986. Depending on the appropriation of this program, state plans may have to be modified.

Question. DOT regulations for several years have required that motor carrier accidents resulting in property damage over $2,000 must be reported to the DOT. Do you think this $2,000 reporting threshold should be raised to account for inflation over the past several years?

Answer. The DOT realizes the need for periodic adjustment to the reporting minimums. We are in the process of promulgating rules addressing this area of concern. FHWA issued a Notice of Proposed Rulemaking on January 16, 1984 (49 CFR 1912, Docket No. MNC 109) which proposd to raise the property damage threshold.

At this time the DOT is considering undertaking an annual adjustment of the property damge amount for reportable accidents to reflect effects of inflation. The DOT would adjust the reporting amount for property damage accidents using an indicator such as the Gross National Product deflator publishing by the Department of Commerce.

Question. Some groups are advocating creation of a Motor Carrier Administration at DOT. Do you think such an Administration would enhance motor carrier safety?

Answer The Department does not believe the creation of a Motor Carrier Administration would enhance motor carrier safety. It is viewed as potentially causing increased bureaucracy and costs. We believe that it is unnecessary as DOT has established a workable alternative through the creation of an Office of the Associate Administrator for Motor Carriers within the Federal Highway Administration. This new unit is the focal point for motor carrier concerns, including motor carrier safety.

Question. The ability to obtain adequate levels of liability insurance coverage has become a serious problem for interstate trucking and bus companies. In your view, has economic deregulation of these industries contributed in any way to the current motor carrier insurance crisis?

Answer. The problem of cost and adequacy of insurance is not peculiar to the transportation industry. These issues affect all lines of commercial property and casualty insurance.

The insurance problem faced by carriers is skyrocketing insurance costs attributable to an insurance capacity crisis. This capacity shortage has also occurred in the reinsurance industry, which has restricted the amount of insurance available to motor carriers needing the higher levels of coverage.

These issues must generally be solved by the insurance industry and the states who regulate the industry. Although economic deregulation has not been a cause of the insurance problem, the economic freedom that now exists as a result of deregulation will permit carriers to pass on higher costs of insurance to their clients in a much more timely and efficient manner.

The CHAIRMAN. Thank you very much.

What is the reason for an 18-percent increase in truck accidents in a 1-year period of time? Do either of you have any view on that?

Mr. TAYLOR. I am going to have to defer to Mr. Landis on that, because safety really is the primary responsibility of the DOT. We know they have gone up. I would hope that no long-range conclusions will be drawn from that statistic. They went up a little bit in 1981, but then they went down in 1982 and 1983. Apparently, they have gone back up again in 1984. But as to the reasons, I do not think I can really lay them out for you, Mr. Chairman.

The CHAIRMAN. Do you think it is insignificant or do you think that it is a significant increase and we do not know why it is an increase?

Mr. TAYLOR. Oh, I think it is a significant increase. As you recited, I think any increase like that is significant.

The CHAIRMAN. I do not mean that you are downplaying the fact that there are 18 percent more accidents, but do you think that it shows something and we do not know the cause of what it is showing, or do you think that it is a blip?

Mr. TAYLOR. What we do not know is whether or not it is a blip. I would certainly hope that we would not take just 1 year that it went up that way and draw permanent conclusions from that because I think it is terribly important that we not wind up coming to the conclusion that deregulation has somehow fostered unsafe motor carrier operations on the Nation's highways.

The CHAIRMAN. You do not agree with that?

Mr. TAYLOR. I do not. I do not think you can point to anything except the figures for this 1 year. As I say, they did go up in 1981, too, after the act, and they went down again in 1982 and 1983. I think we have to pay a great deal of attention to safety. Without any question, I think it is important, but I would hope that we do not draw permanent conclusions from 1 year's figures.

The CHAIRMAN. What is your opinion, Mr. Landis? Do you have a view on that?

Mr. LANDIS. No; I do not have an answer for the question of what the cause is. There certainly has been some change, but we have not yet found the cause.

The CHAIRMAN. Do you think it is a blip or an alarming trend?

Mr. LANDIS. Having just come from a State organization looking at traffic trends, I think I share the Commissioner's view that it is only one part of a long trendline and I would consider it a blip.

The CHAIRMAN. You would what?

Mr. LANDIS. I would consider it a blip in the numbers.

The CHAIRMAN. You do not think that something has happened or is happening that is causing an increase in truck accidents? You think that this 18-percent rise is an anomaly, really?

Mr. LANDIS. No, I do not tie it to anything specific.

Mr. TAYLOR. Well, it should be pointed out that deregulation has put more vehicles on the road. I think there is no question about that. It began to do that in 1980 and 1981. The accident figures went up a little bit in 1981, but then they went down in 1982 and they went down again in 1983, and now they have gone back up again in 1984. I do not think that now that we have had some 5 years under the Motor Carrier Act that permanent conclusions can be drawn from just what has happened in this one particular year. At least I would certainly hope not.

I do think what it tells us is that we should pay some very serious attention to safety. We should all be concerned about it. We are delighted that safety is getting as much attention now as it is. I think that is proper.

The CHAIRMAN. Do either of you think that we, meaning Congress or the Department of Transportation or the ICC, should be doing anything that we are not doing now? For example, is there some legislation we should consider or are there some different approaches that either DOT or ICC should take?

Mr. LANDIS. We are in the midst of a reorganization within DOT right now, within the Federal Highway Administration, that is directly aimed at improving our response to the safety needs of truck and bus safety. There are a variety of programs that I am having to review now. Being new in my position each of those will be reviewed to answer just that question.

The reorganization will do part of that. I think a good answer is what is happening in the MCSAP area. The reorganization will give more service and attention to areas where we are improving State resources and adding significantly to the overall number of inspectors on the road.

The CHAIRMAN. Have you proceeded far enough in your review of Federal regulations—have a fixed idea now of regulations that should be strengthened? Do you have a fixed idea now of regulations that should be weakened?

Mr. LANDIS. No, frankly I do not. I am in the process of working with the act, which requires the review of those regulations. We have nine of them in rulemaking process right now, and each of them addresses specific needs. There are a number of factors that are being considered in each of those rulemaking efforts that are strengthening, in my opinion as I read them, our regulatory effort as far as safety.

There are others that will be attended to, but which specifically is still to be determined.

The CHAIRMAN. Now on the issue of annual inspection or at least annual inspection. I mean, this is the kind of thing that some guy

sitting behind a podium dreams up who does not know what he is talking about, so let me just put this to you.

I suppose, in every State on major highways, trucks have to pull off the road to get weighed, right?

Mr. LANDIS. They do.

The CHAIRMAN. And they do that every day. Would it be feasible when those trucks are being pulled off to be weighed anyhow for there to be a certainty of inspection, although an uncertainty as to exactly what is being inspected? That is to say, let us suppose that there are, say, in a full-fledged inspection, 20 items that are inspected. Maybe it is 100; I do not know. But let us suppose for discussion there are 20.

When the truck is pulled off, could there be somebody there who say takes two items from the list of 20 and just looks at those two items and it is a random two? Could that be done or would that be extremely expensive?

Mr. LANDIS. Sure, and it should not be very expensive. I think it is an excellent idea because that is being done right now. Several States are conducting inspections at their weighing facilities.

The CHAIRMAN. So when a truck pulls off into the weigh station it knows that there is going to be something that is going to be inspected. He does not know what it is, but he knows that there is going to be something that will be inspected?

Mr. LANDIS. At this point the staffing is generally at a level where they may or they may not be there. The question is does the driver know that there is an inspector there or does he not. They are not manned 24 hours in most cases for the inspection process, but where they use them the inspection is done by a State or Federal person.

And to carry on the thought of a limited type inspection, you have heard discussion about the Commercial Vehicle Safety Alliance. One of the purposes of the alliance is to narrow down and identify the critical items that relate to truck safety, and it boils down to 12 items. And those items have reduced the time and effort needed to inspect that truck. It is an efficiency effort that has been used by the States.

A month ago we held a national roadside check, and one of the checkpoints was just south of here in Virginia at the Dumfries weigh station. I went down there and watched both the State inspectors and the Federal inspectors looking at trucks in that kind of facility.

If you look at the volume, it would be impractical to inspect every truck. What we operated at Dumpries was the concept of the next up to give it the randomness, and when the truck comes in and the inspector was free he would take the truck out of the line. There were lines backed up just to go through the scales, so the traffic volume would not allow practically inspection of every truck.

They would take the truck over to a parking area and inspect it. The weigh station is real practical, very practical because it is safer.

The CHAIRMAN. How long did it take to do all 12 items?

Mr. LANDIS. On the average, about 15 to 20 minutes. The older inspection took a half an hour or better. But in 15 or 20 minutes

you can determine that all of the key components of the vehicle are operating in a proper manner.

The CHAIRMAN. Is there anything we should be doing in connection with this to help out? We just set up the at-least-annual inspection requirement in the 1984 act, right?

Mr. LANDIS. At least annual inspection was part of the 1984 act, and we are looking at all of the factors in that—the self-certification, the licensing, the license stations, all of that—as part of the considerations now under the rulemaking effort.

The CHAIRMAN. Right.

Mr. LANDIS. And we are hoping to design an entire system that will also include the roadside inspection, which is more frequent than the annual inspection. As you suggested, we should look closer at the ports of entry. There is a lot of that being done now. Ports are a good place to do work. They are usually clean, and safe. It is a good idea.

The CHAIRMAN. Of the 37,000 truck accidents, what portion of those would be equipment failure and what portion of them would be human error?

Mr. LANDIS. Senator, I do not have the numbers with me. I can sure provide them for the record.

The CHAIRMAN. Some of them, I guess, would be ice and snow and things that would not fall into either category.

Mr. LANDIS. The numbers I have seen are predominantly centered on the driver. The equipment-caused accidents, we discuss accidents a lot as far as equipment in that the equipment compounds the action once the driver makes the error—the brakes that are not working once he over-extends himself, the wheels that fall off when he gets into an attitude that is not safe—and that will never show up as an accident cause. The cause will still be the driver.

Again, I do not have the exact numbers, but I would certainly provide that for you.

The CHAIRMAN. I would appreciate that.

The following was subsequently received for the record:

In 1984 we received 36,824 accident reports from motor carriers. As part of the review and analysis process of these forms, the Bureau of Motor Carrier Safety assigns a "preventability code" to each accident. This code is either "driver" preventable, "vehicle" preventable, i.e. mechanical defects, or non-preventable.

In 1984 the breakdown is as follows:

Total accidents	36,824
Total carriers reporting	5,412
Driver preventable (59 percent)	21,642
Vehicle preventable (4 percent)	2,269

Mr. LANDIS. But the predominance is the driver.

The CHAIRMAN. Every time I go home I am accosted by constituents who are concerned about insurance costs. We are facing that in this Committee now in the product liability question. Doctors are concerned about malpractice insurance costs. Truckers are concerned about the cost of getting insurance. I think everybody is concerned about it. It really is one of the big problems in the country now.

Do either of you have any ideas about what could be done or should be done to reduce the cost of insurance?

Mr. TAYLOR. I guess I do not have any real ideas, Senator, but it is a crisis and I am glad that Congress has recognized it as such. We have just granted the ATA's petition—it cleared last Friday—to hold our own proceeding to examine both the causes and what remedies might be available, because it really is a very, very severe situation.

Rates have gone up in some cases by as much as 500 and 600 percent. There are all kinds of theories about the causation, and I suppose that is the first thing that has to be addressed before you can start thinking about remedies. There are arguments made that when interest rates were high, bargain basement insurance rates were being dished out. Now, interest rates have come down some and claims experience is going up.

It has put the industry in a crunch, and they are trying to extricate themselves. There are some who indicate that the enormous jury verdicts which have been handed down have led the industry to try and seek some legislatively imposed liability caps. I think it is terribly important that Congress give it some attention and try to develop the causes. It seems to me this is the place where some remedies must be developed and worked out, and we are certainly ready to work with you.

We are going to have our own proceeding to see what we can find out about it. The bus industry requested a surcharge to cover insurance costs on short notice, which we granted. We are examining a possible relaxation of our self-insurance rules, in an application that is currently before us. We have had some correspondence from Members of Congress about that proceeding.

So we are doing what we can, but I cannot give you any definitive answers at this point in time. I am just glad you recognize it as a crisis, because that is what it is.

The CHAIRMAN. Do you have any thoughts, Mr. Landis?

Mr. LANDIS. I share your concern. Hardly a day goes by that I do not get a letter from a truck or a bus operator discussing their problems with getting insurance. It is a problem that goes all the way across the board. Everything I see and read on the subject indicates that it is really not a true legislative problem. It is an industry problem but it is affecting the industry that we represent.

The Department of Transportation, I know, is developing a position or some background on the insurance issue. I think back in May Ray Barnhart, administator of the Federal Highway Administration, transmitted some information to both the Senate and the House that indicated some testimony from the insurance industry itself and pointed out some of the problems. I would be more than happy for those positions to get together, but I have not seen anything that is an answer to the problem.

The CHAIRMAN. Well, it is such a recurring problem, not just to truckers but to everybody in the country. And I think it is a snowballing issue. Congress has taken itself out of the issue previously; the Federal Government under the McCarren-Ferguson Act has not been involved in the insurance business.

But I am wondering if we should. I am not proposing anything, believe me. I am just recognizing a problem.

Mr. LANDIS. There is no question it is a problem and there is no question that if it continues with some of the discussion that is

being given from the industry side and the problems that they are facing that will have the potential of a massive violation situation, because they simply cannot meet some of the requirements because the insurance companies are not providing it.

The answer to that is it is an insurance industry problem.

The CHAIRMAN. Senator Gorton?

Senator GORTON. No questions.

The CHAIRMAN. Senator Long?

Senator LONG. No questions.

The CHAIRMAN. I have some more questions which I would like to submit for you in writing. Other members may also. Thank you very much for your testimony.

Mr. TAYLOR. Thank you, Mr. Chairman, delighted to be here.

Mr. LANDIS. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. R.V. Durham, director of Safety and Health, International Brotherhood of Teamsters.

STATEMENT OF R.V. DURHAM, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY: TIM SCULLY, ASSISTANT DIRECTOR, LEGISLATIVE DEPARTMENT

Mr. DURHAM. Good morning, Mr. Chairman.

I am testifying today on behalf of our general president, Jackie Presser, who was unable to be with us. He sends his regrets. He is visiting several countries in Asia at the present time. To my left is Mr. Tim Scully, who is assistant director of the legislative department for our international.

In the interest of time, Mr. Chairman, I would like to summarize our comments about truck safety and the Motor Carrier Act of 1984 and respectfully submit our testimony, if that meets with your approval.

The CHAIRMAN. You do not even have to ask. It is automatic.

Mr. DURHAM. Thank you.

First let me state that the Motor Carrier Safety Act of 1984 is an excellent piece of legislation for which we are grateful to you, Mr. Chairman, and other members of this committee. What concerns us at the IBT is the implementation of that law by the Department of Transportation. We have been watching very closely the implementation as it reflects the congressional intent.

Our concerns about the law are in three main areas. First, we are concerned that the minimum Federal safety standards may be weakened rather than strengthened during the DOT rulemaking which is in progress. We kindly request, Mr. Chairman, that it be stressed to the DOT that the intent of the Act was to strengthen the regulation and not to allow relaxation of the safety regulations that are currently on the books.

Second, we are concerned that the safety fitness provisions of the Act may not be properly implemented by the DOT. Our understanding is that the DOT proposal is prospective rather than retrospective, which will allow approximately 17,000 new entrants to fall between the cracks.

A further concern is the lack of thoroughness of the DOT program as we understand it is being proposed and which would pro-

vide the applicants simply with a questionnaire form which can be picked up at the divisional office and in response to questions recently in one of the advisory committee meetings they suggest that this will all be accomplished within 2 weeks simply by answering certain questions. We would like to see a program include field audits of fitness and an evaluation of all the entrants and carriers who have been granted authority since 1980.

Third, we are concerned that the DOT health study of drivers is a true health study rather than a safety study. We became aware that the Department of Transportation was initiating a study of predominantly accidents rather than a health study, so we are concerned for example with lung cancer, bladder cancer, hearing loss, vibration effects, et cetera, which we have expressed to you, Mr. Chairman, and committee members in previous hearings, which certainly affects our membership.

After involving the National Institute on Occupational Safety and Health, we think that study is back on track, but we would like to continue to monitor it very closely.

Before closing, I would like to place our concerns about the Motor Carrier Safety Act within its proper context. With your permission, Mr. Chairman, I would like to describe for you the big picture, as I call it, in truck safety, and the big picture today, unfortunately, Mr. Chairman, is not a very pretty one.

Record numbers, which is 41 percent, of unsafe equipment was pulled off the highway in late September of this year during the most recent BMCS roadside inspection. In other words, over 4 out of every 10 trucks that were inspected, as you heard from the previous speaker, were pulled out of the line by random—in other words, they were not picking on the worst cases—and by random inspection they found that over 4 of every 10 trucks was so unsafe that it had to be put out of service, not just a clearance flight out or something like that. It was a serious violation.

Also, insurance premiums, which you have expressed concern about, are up 200 to 300 percent. Fatalities are up. And the upward trend is predicted to continue. The image of the trucking industry has hit rock bottom.

What is causing this decline in safety today? We strongly suspect the culprit is deregulation, and please permit me to elaborate on why this is so. Although there is no one study implicating deregulation as the cause of safety problems, there are numerous pieces of evidence which indicates deregulation is the problem. We have cited those studies in our complete statement.

The strongest evidence to date is actually out of California. At a recent PUCO hearing, former California Highway Patrol Chief Kynaston testified that motor carrier regulation has affected highway safety and that "things are happening in the industry after deregulation. Kynaston noted that the fatal and injury truck-related accidents during the 6 months of 1984 were 52.6 percent and 20.22 percent higher than in the same period of 1983.

Evidence of increases in the age of equipment, carriers spending less on maintenance was submitted. California Highway Patrol Commissioner J. E. Smith reported that "clearly truck safety in California is deteriorating at a very rapid pace."

We submit that these conditions in California are not unique to that State. Our experience with recent rate-cutting, cutbacks in carrier safety programs, cutbacks in maintenance of vehicles, et cetera, correlate with the California experience.

What can be done about these conditions? We would suggest the following: One, strengthen rather than weaken the Federal motor carrier safety regulations as called for by Congress in the Motor Carrier Safety Act of 1984; establish a safety fitness program for new entrants which evaluates the fitness of the new entrant, including the 17,000 who have been issued certificates since 1980; ensure that the DOT health study provided for under the Act is truely a study of driver health concerns and problems; and consider transferring jursidiction over driver health from DOT to OSHA; and, finally, continue to oversee closely the implementation of the Motor Carrier Safety Act so it reflects Congressional intent.

Finally, moreover, we would suggest that a study be conducted on truck safety since 1980 to resolve the concerns over safety that have been expressed. We have heard different people express different opinions as to what is causing this or fail to come up with what is causing it. We would envision such a study to be conducted by GAO for the purpose of evaluating the relationship between deregulation and safety.

The study should examine a breakout of the accident data, motor carrier safety audits, and recent roadside inspection data by new entrants since 1980 and those carriers expanding their operating authority, to determine what percentage of new carriers are causing accidents or running unsafe equipment versus pre-deregulation carriers, an in-depth lock at age of equipment—we know that the equipment is getting older—before and after deregulation, money spent on maintenance by carriers before and after, money spent on carrier safety programs before and after, and money spent on these items as a percentage of the total revenue.

Mr. Chairman, we appreciate the opportunity to present our views to you and, as I mentioned, we have additional comments which we included in our complete statement.

The CHAIRMAN. You do not believe that an 18-percent increase in truck accidents is just a blip? You think that this is a trend that has a definite cause?

Mr. DURHAM. I think so, Mr. Chairman. We look at not only the increase in accidents but we see other things that are taking place that are just as troublesome, and that is little or no safety programs, lack of maintenance of equipment, the aging of the equipment. There are so many things that are taking place that anyone in the industry cannot just stick their head in the sand and not say that it is happening.

We see there are some serious problems. We believe that one way to separate the wheat from the chaff and really get to the root of the problem is to do an in-depth study, as we suggest.

The CHAIRMAN. Let us suppose that the cause is deregulation. Deregulation certainly has been controversial. The administration wants to accelerate it; they do not think we have gone far enough. We are not going to turn the clock back, I do not think, but to what degree can what we did in 1982 and what we did in 1984 com-

pensate for that? I mean, are we solving the problem by the changes in the law?

Mr. DURHAM. Mr. Chairman, as I mentioned early on, I think the law that you spearheaded through Congress is an excellent piece of legislation, but as with any law or regulation if we do not have the proper implementation or the enforcement the law or the regulation becomes meaningless. I am not here to try to rehash deregulation.

I would suggest that we have enough problems facing us today in the safety area that if we are looking, setting aside the economic concerns but strictly the safety problems out there, I think that we better stand still on any further deregulation until we see what is causing this tremendous increase in accidents and unsafe equipment out there on the highway.

The CHAIRMAN. What else should we be doing? For example, should there be a more aggressive program of inspection, do you think?

Mr. DURHAM. The roadside inspections is an excellent way to get at the unfit driver and the unfit piece of equipment. In the most recent roadside inspections I think it shows that there is a real problem out there, and certainly increased efforts in that area I think would have a payoff.

There was an article in the newspaper I read the other day where I think it was over 52 percent of the trucks were pulled off in the inspections that were taking place in Georgia, and what they did down there was they blocked all of the exits and entrances for about 120 miles to keep the drivers and the equipment from bypassing those inspection points.

I think in addition to the increased efforts in the roadside inspection is to determine the fitness of these carriers, Mr. Chairman, before we give them operating authority. If a carrier is going to present himself to go out and do business and haul goods across the Nation's highways, then he should be determined to be a fit carrier and this should not just simply mean sending in a postcard or sending in some little questionnaire and saying yes, I have got a copy of the DOT regulations and I know what they say.

I think we have to go beyond that, and I think once we do that we are going to start getting at the root of the problem.

The CHAIRMAN. Do you have a feel for the extent to which the increased number of truck accidents are caused by equipment as opposed to the driver?

Mr. DURHAM. Well, there has been a number of studies that I have looked at and I think the figures that are usually given are from 6 to 12 percent of the accidents are caused by equipment failure, which would support the comment that was made by the previous speaker that predominantly the error is caused by the driver. Unfortunately, what happens is that a driver may be following a little too close and then there is faulty brakes—and brakes, by the way, is the No. 1 culprit in the out-of-service vehicles being put out of service.

So there are contributing factors by the equipment. In 1974, Congress in their wisdom increased or allowed the carriers to increase their weights up to 73,000 pounds at that time. There was a commitment by industry that we would support and work toward im-

proved braking. That is an area that clearly needs attention, and that is improved braking.

We went through the fight 10 years ago over the antilock brakes and they were struck down, but now we see the automobile advertisements on television where they are portraying the antilocks as a safety feature on cars. If the technology is there and the brakes have been improved, Mr. Chairman, that they are safe on automobiles, then certainly with the jackknife problems that we have with the combination vehicles, I cannot hardly accept the argument that antilocks cannot be installed on the truck-trailer or the truck-train-trailer combination.

The CHAIRMAN. Senator Gorton?

Senator Long?

Senator LONG. You touched on a matter that I think we ought to look into more deeply, and you ought to be able to make a wise recommendation with your experience and the position that you hold.

Mr. Chairman, I might just suggest that it comes to my mind that there is just one more situation where the Finance Committee has had a better procedure than the Commerce Committee. In the Finance Committee, we put a sign in front of the witness so you know what his name is. I believe you are Mr. R.V. Durham.

Mr. DURHAM. That is correct, Senator. Sorry about the sign.

Senator LONG. Well, it is not your fault. You should not have to bring the sign with you.

The CHAIRMAN. We will endeavor to furnish free signs from now on.

Senator LONG. Just get in touch with the Finance Committee staff. You are a subcommittee chairman over there. Maybe you can get some signs to identify the witnesses.

Now goodness knows how many lives have been lost because of a driver falling asleep at the wheel. Take Congressman T.A. Thompson, who was one of the best drivers I ever knew in my life—he was a fantastic automobile driver, one I would have recommended to anyone. Of course, to tell you the truth, he was such a terrific driver that he could drive way over the speed limit and you would not notice that the car was going so fast.

He was driving his family home from Washington, DC. A policeman pulled him over on the side, so he went back behind the car, not on the highway but well off the highway, to talk to the policeman about the fact that he had been going too fast. While they were talking about the matter, some fellow driving out of Virginia somewhere fell asleep at the wheel and his truck left the highway, hit those people, hit Mr. Thompson, and he was killed instantly.

Now not only is that a problem at the wheel of a car, but you have the problem of people being intoxicated at the wheel of other carriers. One of the worst industrial accidents we have had in New Orleans or the New Orleans area in many years involved a fellow who was handling a ferryboat back and forth across the river. A ship hit the ferryboat, but after people investigated what had happened, the cause was determined to be the fact that the skipper on that ferryboat was staggering drunk and probably could not see his hand in front of his face because he was in such bad shape.

You would think that there ought to be some routine for somebody to check on this, to see that the person who takes over that responsibility with a lot of lives in his hands would at least be reasonably sober when he shows up on the job. You ought to be able to make some suggestion to us as to how we could see to it that these people do not drive such long hours that they are going to be asleep at the wheel, and also that they show up for work or are on the job sober.

Mr. DURHAM. Mr. Chairman, I mean, Senator, I think you make a couple of excellent comments and I would like to respond along these lines. On the question of the driver going to sleep at the wheel or fatigue, that is a problem. The carriers that we deal with that are under the national master freight in most cases hold their drivers to the 10-hour limit. The Department of Transportation has set the 10-hour limit on driving.

Unfortunately, the problem that we see out there today, there are so many drivers and carriers that are not covered under a labor contract or that are under pressure from the shipper or from a broker to move that load 700, 800 miles and be there the next morning for delivery, and these are some of the problems that we would like to get into in this type of study.

In the most recent roadside, I touched on the 41 percent of equipment. I did not touch on the drivers, but let me mention that 12 percent of all of the drivers were put out of service, and most of them was because they did not even have a log book. They were not even carrying a log book. So there is no question they were in direct violation of the hours of service.

And your colleague that was killed, it was a very tragic accident. I do not know if that was the one happened in Charlotte down on the interstate bypass. I am familiar with that because I am from North Carolina. There are a number of those type accidents that are occurring.

I should mention also I think DOT has some responsibility in this area, not only from enforcement of regulation but allowing a very serious problem in the interpretation, because under the DOT interpretation they have what they call a 15-hour rule, and unfortunately a driver can be in compliance with the 15-hour rule and be on his feet upward of 24 hours. We have submitted comments to the docket in our efforts to strengthen the regulations, Mr. Chairman, and that is one of the things that needs to be addressed.

Now on the alcohol, the intoxication, again under our national master freight agreement, national car haul agreement, and all of our national United Parcel agreement, which employs 100,000 teamsters in itself, just that one company, we have intoxication under alcohol or drugs is a cardinal sin and it is an immediate discharge.

We have recently instituted in the last year a national drug testing program with industry. So we are doing all we can to try to address that problem, Senator. But when you are dealing with all of these thousands of new entrants, there is a lot that needs to be done by Government regulations and possibly even by Congress if the regulatory people do not move in the right direction.

Senator LONG. Well, it would seem to me that it would be reasonable to require that all trucks moving in interstate commerce

should have a log and the log ought to show when the truck was moved, who was driving it, and a modicum of other information. We have that for the taxicab drivers in almost every State in America, who has to show when he went on duty, what stops he made, and so forth. Is that not correct for taxicab drivers?

Mr. DURHAM. Well, I would hate to compare them with the cab drivers out at National Airport.

Senator LONG. All that I am talking about is a record.

Mr. DURHAM. Yes. We certainly support the retention of the logs and keeping a record of the driver's activities—when he stops, when he is driving, when he goes to bed—and we have been very strongly supportive of efforts to tighten the hours of service regulations, and that is an area that really needs to be addressed.

But again I do not care how good the regulation or law is; unless there is enforcement it is really meaningless.

Senator LONG. Well, that is why there ought to be somebody to check it. We need to create jobs. I am always trying to find someplace we can put somebody to work to get him off welfare.

Mr. DURHAM. I appreciate that.

Senator LONG. So we are paying people anyway for doing nothing; we could pay them to man something. And I do not know why rather than have a place on the highway where you are going to stop the trucks, such as a weighing station where all the trucks have to stop, it seems to me that you can just require that when the driver starts out he has to check in at some place where somebody could check and say OK, the driver is in decent shape.

Now the drivers would complain about that, but I think that your union ought to be pushing for it and supporting it.

Mr. DURHAM. Senator, we do support it and there is a regulation on the books currently that requires what they call a pretrip inspection by the driver, and the driver that is employed under a contract that we represent, he knows that he can insist on doing that without any retribution or pressure by his employer. But unfortunately if he does not have contract protection you can run into a situation there where drivers are asked to do a lot of things that are not kosher.

And DOT, as you are probably aware, they do not enforce or prosecute driver discipline. All of those complaints are turned over to OSHA.

Senator LONG Thank you very much.

Mr. DURHAM. Thank you, Senator.

The CHAIRMAN. Let me ask you one other question, Mr. Durham. You said that in your contract with United Parcel Service there is a provision relating to testing for drugs. Is that only the United Parcel Service contract or do you have that in any other contracts also?

Mr. DURHAM. We have it in all of our national agreements, and we are even filtering them down into some of our regional contracts, and it works two ways. One, if there is a probable cause, if the driver reports, as the Senator suggests, and there is some indication there is something wrong with that driver, he is required to submit to a test, a urine and blood test, and if he refuses that is it, he is gone.

The second part of that testing program is in DOT every 2 years a driver is required to take a physical, and the employer may require that driver to be tested, his or her urine be tested for drugs in the DOT recertification. We have gone way beyond what the regulations require with the industry that we deal with, the Roadways, the Yellows, and the CF's, but the 17,000 new entrants, those people——

The CHAIRMAN. Do you support this idea of testing?

Mr. DURHAM. Yes. Our general president has signed an agreement, yes.

The CHAIRMAN. We have had hearings on this problem before with respect to the railroads, and the thought was if you had testing it would be used to harass employees. You have not found that?

Mr. DURHAM. I do not want to leave the wrong impression. We have had this in place for a little over a year, and we have experienced some problems. We had the folks to write a protocol for us—some doctors from up in Pennsylvania—and they did an excellent job.

The problems that we have run into have been the failure on the part of the carrier to follow the guidelines in making sure that the integrity of the urine and whatever that is being tested is protected. The problem is in the drug testing program, Mr. Chairman, is that if you just do a preliminary test and unfortunately that is what so many of the employers are doing in preemployment testing, is they just go that one step. That is about an $18 test.

There is, according to the people, the toxicologists, there is about a 60-percent error rate in that preliminary testing, so you just cannot go No. 1 and stop. What you have to do is you have to get into the forensic testing and fingerprint that urine and that blood, and then you can get it down—and that runs about $80 to $100.

The CHAIRMAN. But you have no doubt that it can be done, so it is a question of method, but it is possible to do it?

Mr. DURHAM. We are convinced that if the proper safeguards are built in in the screening and in the lab work and in the integrity of the testing, yes, it can be done.

The CHAIRMAN. Do you have anything further?

Senator LONG. There is one other thing I wanted to touch on. A drunk driver on the highway is not only a danger to himself, he is a danger to everybody else out there on that highway.

Mr. DURHAM. Right.

Senator LONG. Now do not most of those trucks that your people drive have CB radios in them?

Mr. DURHAM. Yes, sir.

Senator LONG. So they can communicate.

I have been thinking for some time that we ought to try to find a way to get people to use those CB radios in the public interest, which they are supposed to be used for anyway. You know, you are supposed to have that license not just to find a way to beat the speed limit but to benefit society. For example, drivers really ought to be schooled—and I am not trying to put anybody in jail for neglecting this—that if someone has broken down on the side of the road and needs help, particularly if it is some lady driving a car and maybe trying to change a wheel or something, they ought to report to the police when they pass by that there is someone

broken down by the side of the road who needs help. I know in my State the State police are very good about helping someone to change a tire if that person needs help.

But in addition to that, when drivers see somebody weaving on the highway, they really ought to report that to the police.

Mr. DURHAM. Senator, you may not be aware of it. There is a lot of that going on, that is, there is a lot of reporting. The industry and the teamsters believe that the CB radio, if it is properly used, can be an excellent safety tool. Unfortunately, it is abused by some with the foul language, and that kind of turns people off. But by and large, the professional truck driver that is out there recognizes the value of that CB radio as a tool. For example, you may have ice on the north side of the hill and there is not ice on the south side of the hill. You can get those kind of tips to the other drivers, and as you suggest, it can be an excellent way to help each other.

Senator LONG. I was driving on a winding country road just a couple of days ago, and as I came around a horseshoe turn, a car had his headlights on in the middle of the morning, and my wife says, I wonder why he has his lights on. Around the hairpin turn there was a huge piece of equipment that was blocking the road, and that driver, as a courtesy to others, turned those lights on to warn us that there is something ahead, a danger point.

You know, your union could, and I guess does, teach their drivers to warn others. To a considerable extent they do it, I would assume, but your union could provide a lot of leadership, and maybe we could find a way to get other people to follow that leadership of driver courtesy that would help motor safety.

Mr. DURHAM. We certainly agree and will do everything we can, Senator, on that.

Senator LONG. Do you have any kind of course to teach your members that here are things you ought to do to help promote safety?

Mr. DURHAM. As a matter of fact, I am leaving here shortly to go to Cincinnati where we are working right now on joint training guidelines on handling hazardous materials. The industry that we deal with is very interested in safety. We have all participated in the last year or so in what we call the TIA, the Trucking Industry Alliance. We are looking for ways to improve safety and to improve the image of the driver in the industry which is suffering in recent years. The driver, we recognize the driver in the industry is not looked upon as they were 5 or 10 years ago, and we are concerned about that because that is our livelihood out there on the highway, Senator. Our drivers, our members who are employed by these carriers put in 100,000 to 125,000 miles a year out on the highways.

Senator LONG. Thank you.

Mr. DURHAM. Thank you.

The CHAIRMAN. Thank you, Mr. Durham.

[The statement follows:]

STATEMENT OF JACKIE PRESSER, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Good morning, my name is R.V. Durham, Director of Safety and Health, International Brotherhood of Teamsters. I appreciate the opportunity to appear here today

on behalf of our General President Jackie Presser to discuss the Motor Carrier Safety Act and truck safety in general.

First, let me express our full appreciation, Mr. Chairman, for what you and your committee have done for us over the years in the area of truck safety. The Motor Carrier Safety Act of 1984, in particular, is a prime example of what this committee's true commitment is to truck safety. It is an excellent piece of legislation and we are grateful to you for its passage.

Mr. Chairman, we are here today to give you and the committee our perspective on the implementation of the Motor Carrier Safety Act of 1984. Needless to say, that since its passage, we have been very concerned that DOT's implementation of the law reflects Congressional intent. For this reason, we have been following closely the steps toward complete implementation. Although the jury is still out on the effectiveness of the law, I would like to summarize for you some of our concerns about the manner in which the law is being implemented. We have made available a more detailed section-by-section analysis of the law in Appendix A of our statement today.

The Motor Carrier Safety Act of 1984 calls on DOT to establish minimum Federal safety standards for commercial motor vehicles. DOT has issued several advance notices of proposed rulemaking on these minimum standards. The Department has opened for public comment all Federal Motor Carrier Safety Regulations (FMCSR) currently in effect. What concerns us, Mr. Chairman, is the possibility that the safety regulations may be weakened rather than strengthened during these rulemakings. For this reason, we have submitted extensive comments to the rulemaking docket stressing that the present safety regulations must be improved upon to be in keeping with the intent of the Motor Carrier Safety Act. Because of this concern, we kindly request, Mr. Chairman, that the committee support our position and make clear to DOT that a strengthening of the minimum Federal Carrier Safety Regulations is in order.

Along with issuing minimum safety standards, the Act requires DOT to certify the safety fitness of new carriers and any carrier seeking additional operating authority. There are over 17,000 such new entrants into the trucking business since 1980. What concerns us about DOT's proposed safety fitness program is that it is prospective; that is, the safety fitness program is set up to evaluate the safety fitness of the carriers entering the industry at the start up of DOT's program rather than all new entrants since 1980. Even under this prospective program, we understand that the entrants will merely be asked a few questions and granted operating authority within two weeks but with no mechanism to confirm their responses or audit their operations. It is our view that such a program merely gives lip service to the problem of safety fitness of new entrants. We feel to insure the minimum in health and safety, DOT must attempt to evaluate the fitness of the thousands of new entrants since 1980 and give more than just cursory attention to new entrants' operations.

Moving into the area of the research studies specified under the Motor Carrier Safety Act, we would like to take this opportunity to comment on one study in particular, the Section 220 study on health hazards of drivers. We continue to be concerned that this study remain appropriately focused on health hazards to which drivers are exposed. Last spring, when DOT undertook the study, we became aware that DOT was intending to use the Voluntary Employee Injury and Illness Reporting System (VEIIRS), which is a non-random sampling of injuries and illness which is heavily biased on the safety side. While I do not want to trivialize that problem, it was our understanding that the Motor Carrier Safety Act language under Section 220 mandated DOT to conduct a health study, not a safety study. After contacting the National Institute for Occupational Safety and Health (NIOSH) to encourage them to give some direction to DOT, we feel that the study is back on track, at least for the time being. What our experience with the 220 study underscores, however, Mr. Chairman, is a bigger problem that we have with DOT, in the area of driver health concerns. That is, that DOT does not have the necessary expertise to properly address the health concerns of the drivers. This is made clear by the fact that there are no DOT health standards on the books for drivers at this time. To properly address drive health concerns, it may be wise to remove this responsibility from DOT and place it under OSHA. There currently is a Senate bill (S. 1611) which would give DOL jurisdiction over railroad worker health and safety. After completion of this DOT driver health study, we are hopeful that Congress, in their wisdom, would address the whole issue of truck driver health and who would be best suited to address the health concerns of drivers.

In short, Mr. Chairman, we have some real concerns with how the Motor Carrier Safety Act is being implemented and are requesting your assistance in assuring that it be kept on its proper course.

While I am speaking about the Motor Carrier Safety Act of 1984, I feel it is important to place the law in the context in which it exists today. With your permission, Mr. Chairman, I would like to describe for you what I call the big picture: The whole issue of safety and the trucking industry today.

When the Motor Carrier Safety Act was passed in 1984, it appeared against a backdrop of what we believe are very serious safety problems in the industry. In our view, these problems have hit an all-time high today. For example, let's look at the question of unsafe equipment. The most recent (September 26–29, 1985) BMCS Roadside Inspection results show a record number of vehicles (41%) placed out-of-service for imminent hazards and a record number of drivers (12%) placed out-of-service primarily due to hours-of-service violations or, in many cases, no logbooks. Although this data is unofficial at this time, it will be published, however, by DOT soon. In other words, four out of every ten trucks were so unsafe they had to be taken off the road. Although, roadside inspection data has always revealed a large number of vehicles being placed out-of-service, the 1985 data show that vehicles placed out-of-service during the roadside inspection have reached record numbers. There are more unsafe vehicles on the road now than ever before.

Not only are there record numbers of unsafe equipment on the highways, but fatalities are up as well. NHTSA estimates that motor vehicle fatalities will continue their long-term trend upward for the remainder of the 1980's. Fatalities projected for passengers of multi-vehicle collisions involving large trucks (over 10,000 lbs.) are expected to increase 27 percent to 6,800 in 1990, as compared to 5,369 in 1980.

In concert with record numbers of out-of-service vehicles, out-of-service drivers, and record fatalities, we are seeing skyrocketing insurance premium (increases of 200–300%) which is making it difficult for carriers, even with good safety records, to obtain coverage. High insurance rates may lead to a rise in the number of unscrupulous carriers out carrying any insurance, particularly those carriers crossing Southern borders into the United States. To make matters worse, is the fact the enforcement is lax. After a two-year probe into Motor Carrier Safety at DOT, the GAO criticized the Federal government's effort to keep unsafe trucks off the highways. GAO recommended numerous actions be taken by the Secretary of Transportation in their report to correct deficiencies in the Bureau's truck safety effort.

What I have described as the big picture in truck safety, regretfully, Mr. Chairman and members of the Committee, is not a pretty one. I think most honest people in the industry would agree that the trends in the data are showing a decline in truck safety. I submit to you, that even a properly implemented Motor Carrier Safety Act of 1984, may not be able to stop this decline in safety on our highways.

Although there is no hard and fast evidence on what is causing the decline in safety, we strongly suspect that deregulation of the trucking industry is the problem. Various studies on deregulation indicate that safety suffers in a deregulated environment. For example, D. Daryl Wyckoff, of Harvard University, in 1979 concluded that "While it is difficult to confirm a causal relationship, any action, legislative or administrative, that alters the current regulatory structure has the potential of destroying the current self-regulation of safety compliance." A study by Forrest Baker, Transportation Research and Marketing, March, 1985, takes a stronger stand by concluding that "At the present time, the deregulated motor carrier industry and highway safety are on a collision course. Structural changes resulting from deregulation of the industry have produced a combination of rapidly aging equipment operated by underpaid and overworked drivers who are not emotionally qualified for what they are doing and these changes are threatening the safe operation of motor carrier equipment on the highway and endangering the lives of motorists and truckers alike."

A study out of California draws the same conclusion. According to Daniel Baker, Chairman of the California State Regulatory Study Committee, testimony at a recent California PUCO proceeding describes "the deterioration of a once outstanding motor carrier system that efficiently, safely, and responsibly served the 25.5 million people of California . . ." In his published article, Baker put forth California accident data given as expert testimony in the proceeding. That data showed that in California, from 1978–82, there was a steady decline in truck-related accidents. There was an increase, however, in 1983 followed by a very significant increase in 1984. The fatal and injury truck-related accidents during the six months of 1984 were 52.6 and 20.22 percent higher than in the same period of 1983. California Highway Patrol Chief Kynaston testified that there has been an effect on safety and that "things are happening in the industry after deregulation." Kynaston stated for the

record that drivers ae driving long hours and the fatigue factor is causing accidents. He also testified that the drop in carrier revenues and ratecutting have resulted in carriers spending less on maintenance of vehicles. Lack of maintenance has become critical with respect to highway safety, according to Kynaston.

Conditions are so bad in California that a California Administrative Law Judge in his proposed decision in this PUCO proceeding concluded that continued regulation is in the public interest.

The facts out of California are not unique to that state. I submit to you, Mr. Chairman, that these same conditions exist nationwide. Through my experience as a labor representative in this industry, I am profoundly aware of the ratecutting, the aging of the equipment, the cutback in maintenance on vehicles, the logbook violations, the driving long hours, etc., all of which have a critical impact on safety. Quite frankly, safety conditions are not improving under deregulation, they are disasterous.

CONCLUSION

What can be done about this situation?

We have made numerous suggestions throughout our statement as to how truck safety can be improved. These recommendations are outlined below:

Strengthen the Federal Motor Carrier Safety Regulations as called for by Congress in the Motor Carrier Safety Act of 1984.

Establish a safety fitness program for new entrants which evaluates the fitness of the new entrants including the 17,000 who have been issued certificates since 1980.

Ensure that the DOT health study provided for under the Act is truly a study of drivers' health concerns and problems.

Consider transferring jurisdiction over driver health from DOT to OSHA.

Continue to oversee closely the implementation of the Motor Carrier Safety Act so it reflects Congressional intent.

Moreover, we would suggest that a study be conducted on truck safety since 1980 to resolve the concerns over safety that have been expressed. We would envision such a study to be conducted by GAO for the purposed of evaluating the relationship between deregualtion and safety. The study should examine:

A break out of the accident data, motor carrier safety audits, and recent roadside inspection data by new entrants since 1980, and those carriers expanding their operations since 1980 to determine what percentage of new carriers are causing accidents or running unsafe equipment vs. pre-deregulation carriers.

An in-depth look at age of equipment before and after deregulation, money spent on maintenance by carriers before and after, money spent on carrier safety programs before and after, and money spent on these items as a percentage of total revenues.

Thank you for the opportunity to present our views.

APPENDIX A

SECTION-BY-SECTION ANALYSIS OF THE IMPLEMENTATION OF THE MOTOR CARRIER SAFETY ACT OF 1984

Section 206: This section requires DOT to establish minimum Federal safety standards for commercial motor vehicles.

To comply with this section, DOT has issued several Advance Notices of Proposed Rulemakings on Sections 390–399 of the Federal Motor Carrier Safety Regulations (FMCSR), with the exception of 397. The IBT has commented on these rulemakings, stressing that the new safety regulations must be improved upon to reflect the intent of the Motor Carrier Safety Act. The IBT opposes a relaxation of the regulations currently on the books. The IBT's comments to the docket are available upon request.

Sections 207, 208, 209: These sections authorize DOT to analyze and review state laws and regulations and to establish a Commercial Motor Vehicle Safety Regulatory Review Panel.

To comply with this section, DOT has established the safety panel. The IBT has representation on the panel and has participated in its first meeting. We feel that the charge of the panel is a meaningful one, but it will be time-consuming. Although it is too early to draw any conclusions, its goal of uniformity is an important one.

Section 210: This section calls for annual or more frequent vehicle inspections.

BMCS has issued an Advance Notice of Proposed Rulemaking on the inspection program. The IBT submitted comments to the docket stressing that a meaningful

vehicle inspection program should provide for performance of inspections either every three months or every 40,000 miles, whichever occurs first. The IBT suggested that such inspections could be performed by a state agency, self-inspection by the carrier, provided they have been approved by the state, or by commercial garages approved by the state. The IBT comments to the docket are available upon request.

Section 212: This section requires DOT to investigate employee complaints and protect employees from discrimination.

Our understanding of the status of employee complaints at DOT is that they are on the rise. Discrimination complaints are being referred to OSHA for resolution. It seems there is a growing awareness by the employees on this section of the law.

Section 213: This section on penalties provides for civil fines against employers for recordkeeping violations, "serious pattern" of safety violations, and "substantial" violations. Employees are also subject to civil fines for recordkeeping and gross negligence.

It is our understanding that DOT plans to use their new penalty authority for the most recent roadside inspections. DOT plans to initiate a minimum of 200 civil actions against carriers found in violation during the most recent roadside inspection. Since DOT is aware of the pressure being put upon the drivers by some carriers to violate the hours-of-service rules, DOT is taking a firm stand against such carriers. We support this effort by DOT.

Section 215: Under this section, DOT must establish a procedure to evaluate the safety fitness of carriers.

We understand that the program that DOT has drafted uses a questionnaire to gather information from applicant carriers with no means to verify their responses or audit their operations. We also understand that the DOT program will be prospective rather than retrospective.

The IBT opposes a questionnaire approach to an evaluation of safety fitness. Field audits by inspectors should be made before operating certificates are issued. The program should be retrospective to evaluate the 17,000 new entrants since 1980.

Sections 216, 217, 218, 219, 220: These sections require DOT to conduct a heavy truck study (216), a truck occupant protection study (217), study of safety performance (218), a study of safty-related devices (219), and a health study of drivers (220).

The IBT has communicated to DOT how we envision the 216, 217, and 220 studies. We are waiting to be contacted by DOT on the 218 and 219 studies. On the 220 study, we became involved to redirect DOT to examine health concerns of drivers (lung cancer, bladder cancer), etc., rather than accidents. It appears as though this study is back on track.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question. In your testimony you suggest that the Department of Transportation's driver health responsibilities be placed under the Occupational Safety and Health Administration. Why specifically do you believe this shifting of responsibilities is warranted?

Answer. We believe that the shifting of driver health responsibilities from DOT to OSHA is warranted for several reasons. Most importantly, we feel that such a move is necessary because DOT has been doing a less than adequate job in the area of driver health. This is evidenced by the fact that DOT has not issued a single health standard to protect drivers from the hazards to which they are exposed (such as diesel exhaust, vibration, hazardous materials). The lack of research by DOT into the driver health area is further evidence of their lack of attention to driver health problems.

Inadequate health regulation and research comes as no surprise given the fact that BMCS does not have health professionals on staff who could write health standards or conduct health research if they felt so inclined. BMCS employs predominantly engineers in their safety functions. Because of BMCS's lack of expertise in the health area, driver health has been virtually ignored.

To remedy this problem, we are suggesting that jurisdiction over driver health be moved to OSHA. We are suggesting this for several reasons: First, OSHA has the expertise in terms of health professionals on staff to issue driver health standards and to enforce them. Secondly, OSHA has the capability of initiating research into driver health problems through their relationship with NIOSH, whose responsibility is to conduct health studies and to recommend health standards to OSHA. NIOSH is a well-respected research institute which has already made its mark in the area of

driver health. NIOSH has conducted research into driver health problems in the past and is currently investigating the role of diesel exhaust and the prevalence of lung cancer among drivers. NIOSH is also taking a lead role in the driver health investigation mandated by the Motor Carrier Safety Act of 1984.

In addition to OSHA's health expertise and their relationship with NIOSH, we feel that OSHA is the proper place for driver health because they have already acted responsibly in areas of motor carrier employee protection. For example, OSHA is already responsible for the health of two groups of motor carrier employees: dock workers and mechanics. Placing driver health under OSHA's jurisdiction allows OSHA to protect the health of all motor carrier employees, thus clearing up a lot of the confusion that currently surrounds the split in jurisdiction. Also, OSHA is already repsonsible for investigating Section 405 complaints by drivers under the Surface Transportation Act.

All tolled, we feel that the protection of drivers from health hazards would best be handled by OSHA since their sole mandate is employee health and safety. DOT, and particularly BMCS, has many other priorities. Unfortunately, the problem of driver health hazards has not been one.

Question. Some groups are urging creation of a Motor Carrier Administration at the Department of Transportation. Do you believe creation of such an Administration would enhance motor carrier safety?

Answer. We support the concept of a Motor Carrier Administration. There is certainly a need for better coordination between NHTSA and BMCS and other government agencies dealing with heavy truck safety. This is why we support the proposal to move BMCS from FHWA to NHTSA. All too often we have seen the agencies going in different directions. A good example was in the FMVSS 121 Brake Standard. NHTSA required the manufacturers to install the anti-lock feature, but BMCS refused to require the use and maintenance. As a result, the carriers disconnected the anti-lock rather than maintain the system. Other examples are the "grey areas" of jurisdiction between OSHA and BMCS. Unfortunately, all too often the "grey area" becomes a "no man's area" in which safety and health is not provided by either agency because of the confusion or disagreements. We would caution against setting up a separate Administration or moving blocks around just for the sake of change. We also have to be very careful on moving employee safety and health protections into an all-encompassing and new Agency or Administration that is not equipped or staffed to assume such responsibility.

In summary, we do believe a proposal to establish a separate Motor Carrier Administration has merit provided the concerns expressed above are addressed.

Question. Interstate trucking companies are finding it increasingly difficult to obtain adequate levels of liability insurance coverage. In your view, has economic deregulation of the motor carrier industry played any role in the current insurance crisis?

Answer. In our opinion, economic deregulation of the motor carrier industry has exacerbated the problems facing trucking companies because of the insurance crisis. While the insurance crisis was not caused by economic deregulation of trucking, the ability of the trucking industry to adjust to rapidly escalating insurance rates, and the unavailability of insurance coverage in some instances, has been severely hampered by the poor financial condition of many motor carriers. The cutthroat competition, free entry, predatory pricing and other attributes of trucking industry structure and behavior since the enactment of the Motor Carrier Act of 1980 has left many of the surviving motor carriers in poor or marginal financial condition.

Mr. Daniel W. Baker, Chairman of the State Regulatory Study Committee of the State of California, in a recent article agreed with our premise, as follows:

"Aggravating the motor carrier's problems are the substantial losses incurred by the casualty insurance companies that have resulted in widespread cancellations in the public liability, property damage and cargo insurance coverages of motor carriers and premium increases in the range of 200 to 400 percent and more. Whereas the average carrier, in the past, paid premiums equal to 2 percent of its gross revenues, the cost for such insurance coverage has now risen to 7 to 10 percent of its revenues."

From "California A Classical Example of The Effect of Rate Cutting on a Motor Carrier Transportation System," Page 24; Your Letter of The Law, Volume XXXI, No. 2, August 2, 1985.

In addition, the just released report of the State/Industry Task Force on Regulatory Uniformity of the Influential National Association of Regulatory Utility Commissions makes the following observation about the insurance crisis:

"The cost and unavailability of insurance is now becoming a major threat to the motor carrier industry. Yet neither the ICC or the DOT foresaw the crisis, and nei-

ther moved to study or do anything about the problem prior to receiving a petition for rulemaking from the American Trucking Association. Regrettably, little is expected from either agency in resolving this problem."

Page 12—"Part One Introduction, New Dimensions in Transportation, Roles and Relationship For The Future" State/Industry Task Force on Regulatory Uniformity, National Association of Regulatory Untility Commissioners, 1985.

While neither the Interstate Commerce Commission nor the U.S. Department of Transportation foresaw the insurance crisis or would admit that deregulation of trucking plays a major role in the crisis, the potential for damage was forecast even before the Motor Carrier Act of 1980 was enacted by at least one insurance industry expert. In an article appearing in the Journal of Commerce of February 2, 1979, Mr. William Rodda, President of the Marine Insurance Handbook, is reported as having made the following remarks to the Mariner's Club in Atlanta:

"The marine underwriter will find life more difficult as a result of deregulation (of the trucking industry)," according to an expert in transporation insurance. "Adverse effects will spread not only to motor truck cargo insurance but also to the underwriting of all forms of transportation coverage."

Addressing the Mariner's Club in Atlanta, William Rodda, President of the Marine Insurance Handbook, remarked that "the insurance industry has been so preoccupied with the possible deregulation of insurance by means of a repeal modification of the McCarran-Ferguson Act that it has overlooked the probable effects on underwriting of deregulation in the transportation area."

"Casualty underwriters will find themselves underwriting trucking lines under adverse conditions similar to those which affect the transportation of property," he added.

The actual relationship between deregulation and the insurance crisis was succinctly stated by Mr. James Fortner of Collins & Associates, a Grand Rapids, Michigan insurance underwriter in remarks delivered in May, 1985, to the Regional and Distribution Carriers Conference. As reported in Transport Topics of May, 1985, Mr. Fortner stated the following:

". . . there are three major reasons premiums for many motor carriers are increasing:

"1. Deregulation has led to an increase in accident claims because many new companies are cutting back on expenses for such things as maintenance.

"2. The Motor Carrier Act of 1980 caused confusion about proper insurance levels, particularly for the transportation of hazardous materials, and the insurance industry is reacting cautiously to the situation because of the enormous liability involved in hazardous materials spills.

"3. The insurance industry has experienced massive losses in recent years from commercial auto underwriting."

In recent days, the insurance crisis has spread to the household goods moving and storage industry. The Household Goods Carriers Bureau ". . . has asked the ICC for permission to implement a 2.5 percent surcharge earmarked to cover the rising cost of insurance coverage" (Daily Traffic World of November 7, 1985). According to the Daily Traffic World of November 7, 1985:

"The surcharge is needed, according to HGCB, to counter premium increases throughout the first 11 months of this year, with premiums for 1985 increasing an average of 61 percent over 1984 insurance costs for 17 major van lines . . .," (Emphasis supplied)—Daily Traffic World of November 7, 1985.

The increasing possibility of insurance surcharges may lead to increased strife with the so-called independent owner-operators who operate in various sectors of the regulated trucking industry. According to the Daily Traffic World of November 14, 1985:

"The Owner-Operators Independent Drivers Association has disputed a recent practice among ICC licensed trucking companies of asking that agency for insurance related rate increases which are not included in their gross revenue and which truckers do not share with lease operators.

"In a petition for investigation, OOIDA told the ICC that insurance surcharges are not part of a carrier's gross revenue and, because of that, violate the agency's leasing rules."

In summary, while motor carrier deregulation did not cause the insurance crisis, the changes brought upon the regulated trucking industry by the Motor Carrier Act of 1980 have played a major role in aggravating or compounding what might have been just a serious problem to a most critical situation affecting the possible survival of many motor carriers.

Next we have a panel of Thomas Donohue, president and chief executive officer, American Trucking Associations; Richard Schweitzer, legislative counsel, Private Truck Council of America; Norman Sherlock, president and chief executive officer, American Bus Association; Wayne J. Smith, executive director, United Bus Owners of America.

I want to point out that when Senator Long speaks, we listen at the Commerce Committee. Everybody has got a name plate in front of them.

Senator LONG. That is a great result. I have never had such fast action before.

The CHAIRMAN. You are in the right committee, Russell.

Gentlemen, thank you very much. I appreciate you all being here.

Mr. Donohue, you and I have discussed on a number of occasions the initiatives of the ATA in safety matters. I know you are interested in it. Why do you not lead off?

STATEMENTS OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS, INC.; RICHARD P. SCHWEITZER, LEGISLATIVE COUNSEL, PRIVATE TRUCK COUNCIL OF AMERICA; NORMAN R. SHERLOCK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN BUS ASSOCIATION, ACCOMPANIED BY ROBERT FORMAN, VICE PRESIDENT, SAFETY AND SECURITY, TRAILWAYS LINES; AND WAYNE J. SMITH, EXECUTIVE DIRECTOR, UNITED BUS OWNERS OF AMERICA

Mr. DONOHUE. Thank you very much, Senator.

The American Trucking Associations is becoming increasingly concerned about safety on the highway. Day-to-day, we are finding more incidents that give us very deep concern. In 1984, we saw an 18-percent increase in accidents reported to the Bureau of Motor Carrier Safety. We also know that the percentage of motor carriers with unsatisfactory safety ratings is highest amongst those who have recently received their operating authority. In addition, unsatisfactory ratings are more prevalent among carriers with smaller profit margins. Unfortunately, there is a trend in our industry toward reduced profits.

In response to these problems, the ATA in recent months has initiated a number of important activities that will have a very positive effect on truck safety.

First, we have developed a new driver training program entitled "Coaching the Professional"—I happen to have a copy of it with me here today—which presents a positive approach to driver safety responsibilities and emphasizes the importance of courtesy on our highways. It also provides instruction for safe driving procedures. In a few months we have put out 130 of these kits and more than 45,000 drivers have been exposed to this training which comes in films, slides, and workbooks.

Second, we have renewed our support for the Commercial Vehicle Safety Alliance to encourage uniform state vehicle inspection programs along the lines that are being discussed here today.

Third, we have entered into an agreement with a company called DAC services to provide motor carriers with driver record information in an efficient and timely manner so that they can hire the right people. As you know, there is some effort to do this in the Federal government, but there is a question of whether it can be accomplished before the turn of the century.

Fourth, we have begun to develop a verifiable driver analysis program that will assist carriers in selecting employees who are best qualified. I should pause for a moment and make two points about that. No. 1, there are all sorts of legal problems about having programs to analyze the trends of various drivers; and second, there is legislation before this Congress that needs your attention. That is, there is an effort to preclude companies, such as trucking companies, from using polygraph tests under professional supervision to identify those drivers that might be on drugs, using otherwise unsafe practices, or might have been involved in theft. We need to be sure that that legislation does not pass.

Fifth, we have established a new safety service entitled the Safety Focus, to provide carriers with important new safety information as it is developed.

Sixth, we have implemented a program to improve the image of truck drivers by reinforcing their professionalism and establishing a positive self-image about their role on the highway. We will spend, Senator, between $2 million and $5½ million this year on putting that program across this country. The variance depends on how much money we can raise.

Seventh, we have continued our ongoing safety activities, and they include a National Safe Truckdriving Championship and cooperative road patrols between companies, voluntary vehicle inspection, and Take Safety Break activities at truck stops and so on. However, we cannot do it alone, and there is much that the government needs to do.

First, full authorization for the Motor Carrier Safety Assistance Program must be provided by this Congress. We need the dollars for roadside inspections. We need to force the inspector to get the people that stop and wait up the road until the inspection is finished.

Second, we need the government to disqualify drivers for 90 days if they have three moving violations within a year.

Next, we need the application of section 215, the certification of safety fitness, to apply to all carriers, whether they are required to obtain authority or not, which specifically means private carriers as well as for-hire.

In addition, we believe, that road tests for all commercial vehicle drivers should be given in the type of vehicle they are going to drive. If they are going to drive an 18 wheeler, let's not have them take the test in a Toyota.

We believe there should be an elimination of multiple licenses in this country. Most truck drivers have more licenses than you can find in a deck of cards. We need to find a way to have one license so we know when people have been convicted of moving violations.

And finally, we suggest, and we recently changed our own policy in ATA, that every commercial vehicle operating in interstate com-

merce have identification on that vehicle as to who they are and what company they represent.

Now, there are lots of other areas that need attention by the government. We need to change the law to disqualify drivers for drug use, not just for habitual problems in drugs. We need to make sure that we do not have exemptions from the physical qualifications from people operating in commercial zones like Washington, DC, and we need to do something about the recordkeeping business so we can cut down the paperwork.

But let me wrap up with two points, Mr. Chairman. First, on December 4, the ATA and the Highway Users Federation, with some support from the Department of Transportation, will cosponsor a national truck safety meeting. We plan to develop a one-page list of objectives that will lead to highway safety improvements. We have invited organizations, every organization that has to do with highway operation, the enforcement people, the insurance folks, the carriers, the Government and others, manufacturers. We want to develop a list everybody can associate with, put their money and their effort behind, and go out and do the job.

We certainly will invite members of this committee and their staff to participate.

I believe that our actions and our policies and our programs indicate a renewed and very strong commitment by ATA to safety. In fact, let me say, Mr. Chairman, in some instances we are getting so heavy on this that some of our members are getting a little uncomfortable.

I would conclude with one other thought. I was very impressed by Mr. Landis' testimony this morning, but we could get a lot better job done over at DOT if we would take all those disparate elements on trucking and put them together in a motor carrier administration that represents the interests of the consumer as well as the trucking company.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF THE AMERICAN TRUCKING ASSOCIATIONS

I. INTRODUCTION

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations, Inc. I welcome the opportunity to address the important issue of truck safety which is a vital concern to the public and to motor carriers. I submit this statement on behalf of ATA.

ATA is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 11 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt.

The trucking industry employes 7.4 million Americans and generates annual revenues in excess of $200 billion. Each year 5 million trucks log more than 138 billion miles with an overall safety record that is almost twice as good as that for automobiles. These trucks, operated by more than 260,000 American firms, haul 77% of the dollar value of all freight carried in this country.

The American trucking industry provides an essential transportation service to the largest economy in the world. The essentiality of our industry is illustrated by the fact that access to trucking is considered by business to be the second most important factor in deciding where to locate a new plant, ranking behind only cost of property. It is clear that practical business decisions are made in the confidence that truck transportation will be available when needed.

The trucking industry's goal must be to assure that the expectations of business for an efficient, responsible, transportation service are well founded and that such service is based on safety of truck operation.

This hearing gives government and industry an opportunity to evaluate the effectiveness of safety requirements and safety programs, and to determine what is needed to improve the safety performance of the trucking industry.

II. THE IMPORTANCE OF TRUCK SAFETY

The American Trucking Associations is committed more than ever before to truck safety. Our staff worked closely with Congressional staff members over a long period of time in the development of the Motor Carrier Safety Act. As it stands today, the Act is a product of many interest groups and is basically a sound document that provides a strong foundation for improvement in truck safety. Our efforts, on behalf of the trucking industry resulted in deletion of provisions that were impractical. However, some features of the Act that we deemed to be undersirable were included in the final version and will be discussed later.

A safe motor carriers operation is good business practice. It provides for efficiency and productivity, reduces insurance claims and premiums, saves fuel, and consequently fosters a positive image of the trucking industry.

We also view truck safety as an important public safety issue. The American public has come to regard the automobile and the highway network in this country as essential to their way of life. The public and the American economy depend on truck transportation to provide the goods, services, and materials that move America. The motoring public and the trucking industry must share the highway system and all highway users must do what they can to assure highway safety.

Trucks travel 138 billion miles each year servicing the American economy and the American public. The nature of truck operations, the interactions of trucks with the motoring public and the exposure of truck traffic to adverse weather conditions, varying traffice situations, and all types of highway design make safety an important issue. As a result of the industry dependence on our nation's highways and our interaction with the motoring public, also greatly dependent on the highway network, ATA is a leading force in truck safety.

Despite the variety of its operating conditions, the trucking industry has always had an outstanding safety record. There are thousands of professional truck drivers that have safety records of more than 1 million miles. There are numerous trucking companies with excellent safety programs and safety records.

Unfortunately, there are also drivers and companies with records that are not very good that concern us. We are especially worried at this time about the industry safety record, and its possible deterioration. One reason for our concern is that truck accidents reported to the Bureau of Motor Carrier Safety increased 18% in 1984. That is the largest increase since 1972.

Another reason for concern is that the percentage of motor carriers with unsatisfactory safety ratings in highest among those which have recently received operating authority from the Interstate Commerce Commission, and the number of such new carriers is steadily increasing.

A third concern is that unsatisfactory safety ratings seem to be more prevalent among motor carriers with smaller profit margins. There is generally a trend in the trucking industry toward reduced profits.

These indicators portend the possibility of further increases in truck accidents in 1985 and future years, unless strong, positive actions are taken quickly by industry and government.

III. TRUCKING INDUSTRY SAFETY INITIATIVES

In recent months, the trucking industry has undertaken a number of such positive actions, and we plan additional actions in the future.

National Truck Safety Meeting

Our immediate objective is a National Truck Safety Meeting to be held December 5 in Washington, and cohosted by the Highway Users Federation and the Department of Transportation. Those attending will include all groups with expertise in highway and truck safety. The meeting will have three goals: target the major truck safety problems; determine the actions for eliminating those problems; and establish priorities. We will keep this Committee fully informed about the outcome of this meeting.

Current ATA programs and activities which will have a major impact on truck safety are:

Coaching the professional truck driver

Effective driver training is essential to motor carrier safety programs. ATA has established a driver training program that is now available to every fleet in the country. The Coaching program features a film designed to give drivers already on the road an overview of the problems, presents a positive approach to their safety responsibilities, and emphasizes the importance of courtesy to other highway users.

There are six slide programs dealing with the important areas of commercial vehicle driving, including Cushion of Safety, Highway Driving, Rural Areas, Special Hazards, City Driving, and Backing.

A unique feature of this program is the use of driver workbooks as a basis for discussion and as a means of increasing driver understanding of safe driving procedure. The program also utilizes an instructor's guide to insure a uniform high standard of training presentation. The "Coaching" program has been available for only four weeks and already more than 130 motor carriers with approximately 45,000 drivers are using the program. In addition, nine truck driver training schools, eight truck leasing companies and eight insurance companies also have the Coaching program.

Commercial vehicle safety alliance

ATA provides strong support for the Commercial Vehicle Safety Alliance (CVSA) which seeks nationwide uniformity of inspection procedures. CVSA is a voluntary organization of safety enforcement agencies representing 31 states and two Canadian provinces which work for a unified program to reduce truck accidents through roadside checks of equipment and drivers. This additional state focus on truck safety is important to the trucking industry and the highway safety interest.

Many of the states which belong to CVSA are also participants in the Motor Carrier Safety Assistance Program.

CVSA has provided a good mechanism for representatives of the Bureau of Motor Carrier Safety, the states, the trucking industry, and the manufacturers of vehicles and components to develop uniform and effective procedures for inspection, and criteria for placing unsafe vehicles and drivers out of service. The trucking industry needs this uniformity of inspection procedure and interpretation. We urge all states to join CVSA.

Motor vehicle driver record checks

Whie our "Coaching the Professional Truck Driver" program is aimed at current drivers, we are also concerned about prospective employees. As a result, ATA has entered into an agreement with DAC Services to provide motor carriers with driver record information in an efficient and timely manner to be utilized during the hiring process.

The previous driving record of an individual is a strong indication of future driving performance. Motor carriers need this information to make effective employment decisions.

Unfortunately, it has proven to be difficult for the individual motor carrier to obtain the requisite information in a timely manner. The new ATA arrangement with DAC will assist carriers in obtaining this important information. We believe it will help eliminate the practice of bad drivers moving from one company to another.

Driver analysis

ATA is developing a verifiable driver analysis program that will enable the industry to detect driver attitude problems before they impede performance and safety. It is widely recognized that some individuals may be too aggressive, too indifferent, too inattentive, or otherwise pose an unacceptable risk to themselves, their employers, and the public to be entrusted with the responsibilities of a professional truck driver.

The ATA program will enable motor carriers to select job applicants who are best qualified and to screen out those who will create unacceptable risks. While the program is not yet available to carriers, we believe it holds great potential. I look forward to reporting to this Committee in the near future about successful implementation of this program.

Safety focus

ATA has established a new safety service entitled "The Safety Focus" to provide carriers with additional safety program information. The material in each program is designed for the guidance of managers and supervisors in conducting safety meetings or in conversation with individual employees.

Topics covered include: Driver Image, Fuel Efficient Driving, Proper Passing, Following Distance, Bad Weather Driving, Care and Inspection of the Vehicle, Dock Safety, and Shop Safety.

Safety management training

ATA has established new training for safety officials in the trucking industry as part of our professional driver training program, "Coaching the Professional Truck Driver". ATA is also developing a new safety training program for operations personnel and small carrier managers, and is developing hazardous materials training seminars for carrier safety directors and supervisors.

Safety training through colleges and universities is provided to trucking industry personnel by ATA as a primary supporter of the National Committee for Motor Fleet Supervisor Training. Thousands of safety practitioners in the trucking industry have taken this training.

Driver image program

ATA is engaged in a carefully planned program to improve safety and the image of truck drivers by reinforcing their professionalism and establishing a positive self-image. The program will include the selection of 6–12 professional truck drivers who will be known as America's Road Team to serve as official industry spokesman to the public, media, and government officials.

These new initiatives are in addition to the ongoing ATA motor carrier safety programs conducted through ATA and our affiliated state Councils of Safety Supervisors, which include: Safe Driving Championships, Cooperative Road Patrol, Voluntary Vehicle Inspection, Take A Safety Break Campaigns and other programs we have had in place for a number of years that promote and support truck and highway safety.

IV. GOVERNMENT PROGRAMS AND REQUIREMENTS THAT ARE NEEDED

The government has made progress in recent years in recognizing and addressing truck safety needs. There are still a number of areas that need attention:

Motor carrier safety assistance program

One of the most important efforts that can be made to improve the safety of truck operations is to strengthen the Federal/State partnership that exists under the Motor Carrier Safety Assistance Program. The program is now in its third year. American Trucking Associations strongly supports the MCSAP program. We have seen evidence of its effectiveness because of the calls we have received in recent months from carriers whose vehicles or drivers have been put out of service.

Almost half of the participating states are still developing their programs and by next year, most of these states should be ready for implementation funding. This should greatly increase the overall effectiveness of the program as additional states inaugurate the inspection program.

To date, the Motor Carrier Safety Assistance Program has been funded at approximately 50 percent of the levels authorized in the Surfaced Transportation Assistance Act. The time has come to fully fund this vital activity. Funding this year, authorized by the Surface Transportation Assistance Act should be $30 million. DOT has asked for only $20 million. Funding next year should be $40 million, and the following year STAA authorizes $50 million. The time has come also to extend authorization of the program.

Effective enforcement

The trucking industry is calling for increased enforcement of safety regulations. We are inviting closer inspection of our operations. The potential problems that could result are that motor carriers will be more vulnerable to improper interpretations of regulations, heavier penalties, and more time-consuming audits. We are seeking fairness and equity of enforcement among all carriers as an integral part of this increased enforcement activity.

One of our major concerns is that most of the auditing of motor carriers by federal inspectors, in the past, has focused on larger motor carriers. Obviously, an auditor finds it more desirable to audit a fleet with 1,000 vehicles, a good record-keeping system, and a well-lighted and comfortable work location, than to audit numerous motor carriers which have only one or a few vehicles, with record systems and accommodations that are very poor.

For years, the larger carriers have been the primary target of audits, but it is questionable from a safety standpoint that they should be.

What's needed for safety is for federal inspectors to analyze the results of their roadside inspections, bite the bullet, and do more audits on small carriers which are usually less visible, but which also may have unsafe practices such as hours of service violations, driver problems, and speed violations.

Driver disqualification

The Federal Motor Carrier Safety Regulations provide that a motor carrier must review the traffic records of its drivers so that it will not retain those drivers with poor records. Unfortunately, the rules do not provide for a specific number of violations that will disqualify drivers. This has made it inordinately difficult for some carriers to disqualify drivers with bad traffic records because there is no force of law to support their actions. The trucking industry and the motoring public deserve better. ATA has urged the Bureau of Motor Carrier Safety to adopt a rule which provides for 90 days disqualification of a driver for any accumulation of three moving violations in 12 months while on-duty driving a commercial vehicle subject to the provisions of the Motor Carrier Safety Act of 1984.

Certification of safety fitness

Section 215 of the Motor Carrier Safety Act provides for a certification of safety fitness for all motor carriers. The trucking industry supports this requirement because the need for safe truck operations is critical to highway safety. All truck operations are subject to the same hazards, and all must be subject to the same safety standards and regulations.

Some misunderstandings exist in DOT as to the applicability of this section to all motor carriers subject to the Motor Carrier Safety Act. We believe Section 215 should be clarified so it is understood that the requirements of this section apply to carriers whether or not they are required to obtain authority from the Interstate Commerce Commission. It is incumbent on DOT, as specified in the Act to "establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles."

The section dealing with safety fitness provides for a sanction for motor carriers seeking certificates from the Interstate Commerce Commission by specifying certificates be denied to carriers found to be unfit. However, there is no comparable sanction for other carriers found to be unfit. It is important that all carriers be treated equally with regard to certification of safety fitness. The Act should be amended to establish a sanction for carriers not required to seek authority from the ICC. Without such a sanction, the safety fitness requirement will be significantly less effective.

Classified licensing

The influence of the federal government is needed for revision of licensing systems so that applicants are given examinations on the regulations applicable to the type of vehicle to be driven.

A road test must be given on the type of vehicle or combination the applicant intends to drive. Only 27 states require such testing. Any such system must include a provision for qualified motor carriers to administer the road test to applicants they intend to employ. Those who pass can then be administered the written examination and other tests by the appropriate state agency.

A situation in which a person is tested in a compact car and is issued a license that legally permits the operation of combination commercial vehicles is counterproductive for an effective truck safety program.

Multiple licensing

The truck safety interest continues to be compromised because of the opportunity for commercial vehicle drivers to obtain several operator's licenses. The present system permits drivers to spread bad traffic records over several states to escape sanctions that would be otherwise imposed by a single state having the complete adverse record. Congress and the Department of Transportation need to take strong action to promote implementation of the "one-license concept" by all states to be sure that no driver holds a license except in the state of legal residence.

Improved driver record systems

The Congress and the Department of Transportation need to be involved with ATA, the American Insurance Association, and the American Association of Motor Vehicle Administrators in developing a new system which will give the trucking industry a better means of obtaining traffic records of job applicants and in-service drivers, and to effectively address the driver multiple licensing problem.

Present regulations require motor carriers to consider driving records so that persons whose records indicate a disregard for safety will not continue as drivers. Presently, motor carriers do not have the information they need to make proper employment decisions.

(a) The trucking industry needs a full interchange of information between the states on convictions for moving violations to insure that all such information becomes a matter of record where the driver is licensed.

(b) Traffic citations and driver records must indicate the type of vehicle being driven at the time of the violation.

(c) Traffic records must show all accident involvements and indicate whether or not the person was convicted of a violation in connection therewith.

National driver register

The purpose of the National Driver Register is to establish a central listing of drivers whose licenses have been revoked or who have been convicted of very serious offenses, such as a traffic violation in connection with an accident resulting in a fatality. The trucking industry is a strong supporter of the NDR program, but we have several concerns that we believe deserve consideration and action by Congress:

(1) The NDR should provide a record of all moving violations for truck drivers so that an employer can determine if a driver is having driving problems before those problems become serious enough to result in an accident, a major traffic offense, or license revocation;

(2) The NDR should contain a unique identifier so that a truck driver cannot change identity and obtain two or more licenses to conceal moving violations by spreading them among those licenses. Such an identifier might be a print of an individuals thumb or retina, or a comparable characteristic that is proven and acceptable.

Unfortunately, the revised NDR program will not be fully operationally until 1993. It needs to be expedited to facilitate an accurate and more efficient means of checking truck driver traffic records.

Review and preemption of State regulations

Uniformity of truck safety regulations is vitally important. When regulations vary from state to state they are confusing to truck drivers, to trucking companies, and even to the general driving public. Uniform regulations are easier to comply with and they therefore promote safety.

In the development of the Motor Carrier Safety Act, ATA was a strong advocate of uniformity of state and federal regulations. The Act mandates a procedure to determine preemption of state requirements which is more complex than ATA had wanted. However, provisions of the Act give the Secretary authority to preempt state requirements and so the highly desirable goal of uniformity is now in sight.

There is no definition of "incompatibility" in the Act. One will have to be developed by the Secretary or included in the Act. An "incompatibility" provision will have some real meaning as it relates to preemption of state requirements.

The trucking industry supports the concept of the review of state regulations. We foresee the process as leading to a greater degree of uniformity of truck safety regulation of the various states, and to greater conformity between state and federal requirements. In addition to uniformity, the industry hopes that the review process may spotlight obsolete state requirements that should be repealed. We hope that the review process will serve to encourage states to repeal these rules as they no longer serve a useful purpose.

The trucking industry believes that the process for preempting state regulations found to be more stringent than comparable federal regulations is unduly difficult and is strongly oriented toward maintaining the status quo. One factor which should be considered in the preemption of a "more stringent" state regulation is the recent history of its enforcement. This factor is not listed in Section 208(b)(4), yet if a regulation is not being enforced, and there is no accident history associated with non-enforcement, there would be a presumption that the regulation is not needed.

Inspection

The trucking industry recognizes the importance of operating safe vehicles. The industry also recognizes the value of current roadside inspection programs in providing immediate detection of unsafe vehicles and a means of placing vehicles out of service when their condition is so bad as to be likely to be involved in an accident. Roadside inspections are also valuable for monitoring driver compliance with medical qualifications, hours of service limits, and for detecting fatigued drivers and placing them out of service.

ATA also supports an "annualized" inspection system which would required that specified safety items covered in 49 CFR Parts 393 and 396 be checked annually. Such a program must also provide for:

(a) Self-inspection by motor carriers having proper facilities and qualified personnel;

(b) A wide choice of inspection facilities including branches or dealership of original equipment manufacturers; independent shops, truck stops, etc.

(c) Evidence of the inspection and the date it was performed in the form of a sticker, or a suitable "on board" record.

Another major benefit of this section of the Act is that the federal standards and self inspection of motor carriers will preempt state inspection requirements which are impractical and burdensome, such as the Pennsylvania inspection requirement that was imposed on commercial vehicles with a gross vehicle weight greater than 10,000 lbs.

Employee complaints

When the Act was drafted, ATA worked closely with Congressional staff to ensure that employee complaints registered with the Department of Transportation would be non-frivolous in nature. The Department has established, and published a procedure for handling complaints that appears to be satisfactory for the protection of motor carriers from complants that are frivolous.

The trucking industry is satisfied that the language of this section limits the investigation of complaints to those that are non-frivolous in nature. Experience of carriers under the complaint and discrimination cases investigated by the Occupational Safety and Health Administration as mandated under Section 405 of the Surface Transportation Assistance Act of 1982, showed that many of the complaints were unfounded, yet carriers had to bear substantial expense to defend themselves.

Penalties

ATA opposed the new civil penalties included in the Motor Carrier Safety Act. We are still concerned that the penalties might be abused. However, we are gratified that the Act requires a study of the effectiveness of civil penalties.

We recognize that the imposition of civil penalties is sought at the discretion of the Secretary of Transportation, and that consideration is to be given to the gravity and nature of the violation, the past record of the carrier, the carrier's ability to pay, etc. Nonetheless, the industry remains understandably concerned as to how these penalties will be assessed.

An indication of the problem is to be seen where states are requiring drivers to post collateral of $50-$100 for minor driver's log violations such as not having logs up-to-date or failure to show the location of a change of duty status. Penalties must be reasonable and be consistent with the gravity of the violation.

If we find abuses of the civil penalties authority, ATA will bring these to the attention of the Secretary and the Congress.

Vehicle indentification

The federal government should require permanent identification of the owner, or long-term lessee, of every vehicle operation in interstate commerce. It should also establish a stong program to get every state to adopt and enforce a similar vehicle identification requirement for intrastate motor carriers.

Identification on vehicles is important for safety. Truck drivers who cannot be readily identified because their vehicles are not marked are more likey to engage in unsafe practices than those who can be identified and reported for their manner of driving.

ATA has a "hotline" to receive complaints from the public about unsafe truck drivers. ATA relays those complaints to the owners of trucks, but is often frustrated when the public complains about a vehicle that has no identification. We cannot make contact with the owner to report the complaint.

Last week at the 1985 ATA Convention, the Executive Committee directed ATA staff to campaign for federal and state identification requirements. We urge the Congress and the Department of Transportation to take positive action on this matter as quickly as possible.

V. REVISION OF SAFETY REGULATIONS

The Motor Carrier Safety Act mandates review and revision as necessary of the Federal Motor Carrier Safety Regulations. ATA has provided comments to the Department of Transportation and proposed changes which we believe will make the

safety regulations more effective. Other changes should be adopted to reduce unnecessary paperwork burdens on motor carriers. Our current areas of concern are:

Drug use

The trucking industry recognized the importance of physically fit, well qualified drivers to the safety of truck operations. Motor carriers and the motoring public cannot afford to have drivers whose judgments and perceptions are warped by substance abuse. In November, 1984, BMCS strengthened its proscriptions on substance abuse by incorporating material from the Drug Enforcement Administration listing those substances with great potential for harm and no recognized medical use.

The usefulness of this change was unfortunately undermined by making its applicability dependent on showing a current clinical diagnosis of drug dependence. Proving drug dependence is a long, costly and uncertain process. The trucking industry needs and the motoring public deserves amendments to the Federal Motor Carrier Safety Regulations to disqualify drivers on the basis of any medically-recognized evidence of use of certain drugs and other substances. We want to emphasize use as contrasted with the long process of trying to determine dependence.

On October 1, 1985, the Bureau of Motor Carrier Safety proposed to make drug use, rather than dependence the criterion for driver medical disqualification. With the proliferation of drug abuse in our society in recent years, and the shared responsibility for highway safety of the trucking industry and the Department of Transportation, this change in the federal safety regulations drug rule now under consideration by the Bureau of Motor Carrier Safety must be made.

Examination on the Federal Motor Carrier Safety Regulations

The Federal Motor Carrier Safety Regulations require driver-applicants to take a test on knowledge of the Federal Motor Carrier Safety Regulations. However, the Federal Motor Carrier Safety Regulations do not provide for a passing grade for the exam.

The American Trucking Associations supports effective safety regulations. We view them as sound business practice. In fact the present driver qualification rules which were in large measure adopted in 1971 were based to a great extend on industry practice. The rules generally provide for an effective minimum carrier safety program, and many of the requirements address driver safety responsibility. In fact, drivers are required to be familiar with the regulations, yet there is no requirement that drivers pass the prescribed exam.

Automobile drivers in this country are required to pass a written exam. Truck drivers who have much greater exposure to accident situations because of mileage, varying terrain, traffic and weather conditions are not. A pass-fail grade for the written exam is an important consideration in driver qualification, and we urge DOT to take the necessary steps to require a pass-fail grade for the exam.

Physical qualifications for local drivers

A change is needed in the regulatory exemptions for "commercial zone" operations which would make drivers operating wholly within commercial zones subject to the medical requirements of Part 391, Qualifications of Drivers. With the advent of many miles of high-speed beltways, expressways and arterial streets, drivers operating in metropolitan areas are subject to the same driving hazards as over the road operators and should meet the same standards of physical fitness as those in line-haul service. We have urged the Department of Transportation to delete the "commercial zone" exemption for driver physical qualifications.

Accident reporting

The trucking industry urges early action on an increase in the minimum dollar figure for the reporting of property damage accidents from the present $2,000 to the more realistic figure of not less than $4,000. The present minimum level took effect in 1973 and has remained unchanged despite the high rates of inflation of recent years.

We also urge DOT to make better use of the accident data it is collecting under present regulations. Annual truck accident summaries published by BMCS contain less information now than just a few years ago. The trucking industry, the research community and DOT need better data on accident experience.

Also there is need for a joint effort by the Department of Transportation, the trucking industry and the research community to determine what data is needed and how it can best be obtained through the accident reporting process.

Hours of service records

The trucking industry supports the house of service limits because they provide adequate safeguards against driver fatigue and accidents. However, the associated recordkeeping requirements, the driver log, in its present form is unduly burdensome.

ATA strongly supports a record of hours worked and hours driven. It is good business practice for the carrier and important for federal and state safety inspectors. However, there is a need to allow for greater utilization of normal carrier business records for recording hours of work and monitoring compliance.

The Bureau of Motor Carrier Safety provided for a moderate improvement in this area through amendments to the driver log which became effective in January, 1983. Unfortunately, this improvement was shortlived. This rule change was rescinded as a result of a lawsuit on procedural grounds that interested parties had not been afforded sufficient opportunity for comment.

The rulemaking has been subsequently reopened for further comment. We believe that sufficient information has been elicited to fully justify a return to a simplified record. We urge prompt action by the Bureau to reauthorize the simplified record of duty status.

Vehicle condition reports

Since April 1, 1983, the Bureau of Motor Carrier Safety has required a copy of the previous driver's vehicle condition report in the power unit.

At the end of each trip, a truck driver must prepare and submit a report to the carrier on the condition of the vehicle driven. Where safety-related defects are reported, the carrier or its agent is required to make the repair and certify that the repairs have been made. A copy of the report must be put back in the power unit for review by the next driver assigned to it. If a safety-related defect was reported, the next driver must sign the review copy acknowledging that the repair has been made and certified.

In 1982, the Presidential Task Force on Regulatory Relief determined that the BMCS vehicle condition report was the eighth most burdensome federal reporting/record-keeping requirement. The Federal Highway Administration has estimated that only ⅓ of the vehicle condition reports contain a complaint of any kind. BMCS estimates that only 55 percent of that ⅓ address safety-related defects. Thus, only 18 percent of the vehicle condition reports prepared, less than one in five, have anything whatsoever to do with safety.

ATA supports the premise that drivers should be aware of the condition of their equipment. The trucking industry believes drivers should, on request, see a copy of the vehicle condition report prepared by the previous driver. We believe that this can best be handled at terminals and other dispatch points without the need to routinely put a piece of paper in the cab, particularly when past experience has shown a relatively little, if any benefit from the practice.

The present requirement is a particularly flagrant exercise in futility where the driver is regularly assigned to the vehicle, or where, in the case of an owner-operator, the driver owns the vehicle and, is leased to a carrier. In many cases these drivers perform the repairs or are present when they are performed. In these situations, the current regulations literally have drivers writing notes to themselves.

Hazardous materials

The need for uniformity of hazardous materials regulations is especially critical. There must not be confusion or misunderstanding from one jurisdiction to another about the meaning of signs, labels, markings on packages and vehicles transporting hazardous materials. Fire fighters, police personnel, truck drivers, and trucking companies need to be operating under the same set of rules from state to state and from coast to coast to eliminate the potential for leaks, spills and catastrophic accidents involving hazardous materials.

Yet the trucking industry is besieged by varying rules, regulations, and restrictions. Congress must act to protect transporters and assure safe hazardous materials transportation by mandating a single national set of hazardous materials regulations.

The major problem area in the Motor Carrier Safety Act relating to hazardous materials is the prohibition on revision of hazardous materials requirements that are part of the Federal Motor Carrier Safety Regulations. This means that the routing rule in Part 397 of the Safety Regulations cannot be eliminated or made less stringent unless there is an equivalent for more stringent requirement promulgated under the Hazardous Materials Act.

There have been some abuses of the routing provision in Part 397. Some jurisdictions have used that provision to circumvent Department of Transportation rulings on inconsistency relative to restrictions on routing of hazardous materials vehicles. The most noteable incident involved restrictions imposed by the city of Cincinnati.

There is no safety justification for the prohibition on revision of Part 397 and so it should be eliminated to allow the Secretary to establish and revise regulations as needed for safety and practicality of truck operations.

VI. SAFETY STUDIES

The Act mandates several studies, all of which are of interest to the trucking industry.

We are particularly interested in the safety of employees and so the study of the protection afforded drivers by the vehicle has special significance to us. ATA's concern for employee safety in the event of a crash led to our development of an audio-visual program which promotes the use of safety belts by truck drivers.

When the Act was developed, ATA advocated its applicability to intrastate motor carriers as well as to interstate carriers. As enacted, the Act applies only to interstate carriers, but we are pleased that there is a study mandated to determine the effectiveness of state safety regulations, and to determine if intrastate operations should be subject to federal safety requirements. This is important because approximately 50 percent of truck accidents involve trucks operating in intrastate commerce. Obviously it is important that they be subject to effective safety controls.

The only study which is due immediately is the study of health hazards mandated by Section 220 of the Act. A report to Congress is due by October 30. The trucking industry was not consulted during the conduct of the study. We were advised that we would be and we emphasized our interest in being involved. We are anxious to see the report and the findings. We will provide the Committee with our observations after we review and analyze the study.

Another study of special interest to ATA is of the extent to which truck drivers comply with traffic laws, and of the need of law enforcement agencies to ensure such compliance. We have been informed by Department of Transportation staff members that this study has been difficult to initiate because of the problems of monitoring such compliance. ATA has offered its assistance and help from motor carriers because of our belief that additional traffic law enforcement is essential if truck safety is to be significantly improved.

VII. CONCLUSION

In the past year, there has been extensive activity by Department of Transportation staff to carry out the mandate of the Motor Carrier Safety Act of 1984. Much has been done, but it is only a minor part of what needs to be accomplished. We are hopeful that many of the issues addressed in these comments will be effectively addressed in the coming year.

In the next year, the trucking industry also expects new regulations as mandated by the Act, and the release of additional studies which are also mandated.

During the coming year, the trucking industry will spend hundreds of millions of dollars for truck safety. ATA will spend $5 million to provide the leadership that is needed to improve truck safety and the image of truck drivers.

We will seek to work cooperatively with the Department of Transportation on programs to reduce accidents and save lives. The trucking industry and the government have a mutual interest and concern for truck safety that transcends any of our problems and conflicts on other matters such as deregulation, representation in the DOT, and taxes.

Our philosophy on safety is that we will do our part, and we expect the government agencies to do theirs.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question. In your testimony, you urge extension of the funding authorization for the Motor Carrier Safety Assistance Program. What extension length would be desirable and at what funding levels?

Answer. The Assistance Program has been operative for a short period of time. It is obvious from the progress made that the program needs to be beefed up. The states now participating in the program will drop out unless they are assured that

they can move into the sceond phase of the program, the actual enforcement activity, without fear of the program being shut down for lack of federal funds. It is essential that funding be authorized for at least an additional five years. It would be preferable if funding authorization can be open ended.

The Assistance Program must increase the number of inspection points and the number of vehicles inspected. Truck operators must be convinced that it is more practical to maintain a vehicle in good condition than it is to take a chance on having a vehicle stopped and placed out of service for defective condition. Also, the program must include enforcement of hazardous materials requirements. Funding authorization of at least $80 million per year is needed to accomplish these things, and to continue enforcement of federal requirements among intrastate carriers as well as interstate carriers.

Question. In your view, is there any direct correlation between federal economic deregulation and the safety performance of the trucking industry since enactment of the Motor Carrier Act of 1980?

Answer. Yes. Federal economic deregulation has resulted in reduced profit margins for the majority of motor carriers. Motor carriers which are in financial difficulty take short cuts on maintenance of vehicles and this increases a potential for accident producing defects in major components, such as brakes, tires and steering. Carriers in financial difficulty are more likely to yield to shipper preasures for freight movements that can only be accomplished by driving at speeds above the speed limit and in violation of hours of service regulations. Such violations increase a potential for accidents resulting from loss of control or from driver fatigue.

Almost 70 percent of the Class III motor carriers with unsatisfactory safety ratings assigned by DOT received their initial authority to operate since 1978 when entry into the trucking industry was liberalized. Yet the new entrants account only for 50 percent of all Class III carriers. Class I and II carriers with unsatisfactory safety ratings have profit margins 25 percent below the industry average.

In 1984 there was a significant increase of 18 percent in accidents reported to the Bureau of Motor Carrier Safety and we believe that this magnitude shows that deregulation has had an adverse affect on safety.

The AAA Foundation for Traffic Safety has said that changes resulting from deregulation "are threatening the safe operation of motor carrier equipment on the highways and endangering the lives of motorists and truckers alike."

Question. Some states argue that the states are in a better position than the federal government to determine if there is a safety benefit associated with a state regulation which does not conform to federal standards. They further argue that a regulation which the federal government determines has no safety benefit may in fact be a needed regulation. What is your view of this argument?

Answer. We do not consider the federal standards to be gospel. Any organization, individual or state has the right to petition for a change in federal requirements. If the proposed change offers greater safety and practicality than a current federal requirement, the trucking industry would certainly support the proposed change. Generally speaking, however, there is no justification for state preemption of federal requirements. It that were allowed, the confusion of state requirements would make it impossible for an interstate carrier to comply with regulations from one state to another. The major objective should be uniform truck safety regulations nationally, and state exemptions should be allowed only for locally compelling needs and if there is no undue burden on Commerce.

Question. You expressed your concern about the civil penalties for safety violations included in the Motor Carrier Safety Act of 1984. Have you found any abuses in the civil penalty authority at the federal level?

Answer. ATA has not had complaints about the level of civil penalties imposed by the federal government since the Motor Carrier Safety Act of 1984 was passed. However, it may be too early to determine if the penalties will be a problem for motor carriers. It is our understanding that the federal government is still in the process of establishing its penalty schedule.

However, we have had numberous complaints about the penalties imposed by state authorities resulting from enforcement of federal regulations as authorized by the Surface Transportation Assistance Act of 1982 and the Motor Carrier Assistance Program which was developed to implement the provisions of the STAA. There is a feeling among many motor carriers, especially owner-operators, that the state enforcement agencies are more interested in the income that can be obtained through enforcement of the federal regulations than they are in promoting safety. At the present time, this is a matter of perception. When ATA obtains solid facts which indicate the reality of a problem with the states we will be in touch with the states individually, with the Department of Transportation and with the Congress.

Question. Clearly, the difficulties being experienced by the trucking companies seeking to obtain adequatre levels of liability insurance coverage are extremely serious. In your view, has economic deregulation of the trucking industry contributed in any way to the insurance crisis now facing the trucking industry?

Answer. No. The insurance crisis for the trucking industry as a whole was precipitated by heavy losses incurred by the insurance industry because of many factors. We have no doubt however that economic deregulation of the trucking industry has contributed to additional insurance problems for those motor carriers which have taken short cuts on safety and had more accidents as a result of financial problems which have developed because of deregulation.

The CHAIRMAN. Thank you, Mr. Donohue.

Mr. Schweitzer.

Mr. SCHWEITZER. Mr. Chairman, members of the committee, I am Rick Schweitzer, legislative counsel for PTCA. With me today is Richard Henderson, the Private Truck Council's executive vice president.

As you know, private carriage is by far the largest segment of the trucking industry. About two-thirds of all intercity freight is hauled by private carriers, and the Private Truck Council strongly supported passage of the Motor Carrier Safety Act last year.

I think the act had two major obectives that I want to address this morning. One was the establishment of uniform safety regulations. The other is increased enforcement efforts. There are programs that have emanated from the act itself, from other governmental activities and from private sector initiatives that are pushing us toward these objectives. I think the most important or one of the most important programs is the Motor Carrier Safety Assistance Program. You have heard it mentioned several times already this morning. It is a Federal Grant Program for the States to adopt the Federal safety regulations and also provide training for State enforcement personnel in roadside inspection.

Prior to establishment of this program in the 1982 Surface Transportation Assistance Act, about 10 States had some kind of viable set of safety regulations and enforcement. Maybe 20 other States had some kind of token set of regulations.

In fiscal year 1986, 48 States have applied for grant money under this program, and I am pleased to note that the Senate has appropriated $20 million for this program. That is up from $14 million in the House, but it is far short of the $30 million authorization level. And I would second Mr. Donohue's comment that we want appropriations for this program at the full authorization level for this year and all subsequent years.

The bottom line for this program is that within a few years there are going to be between 2,000 and 3,000 State inspectors out on the highways doing roadside inspections using the Federal Motor Carrier Safety Regulations. That compares with about 100 to 150 Federal inspectors that we have had in the past. The chances of a violator getting caught are going to go up substantially.

Under MCSAP, as I said, the States will adopt the Federal safety regulations as a minimum. Under the Motor Carrier Safety Act, the Commercial Motor Carrier Safety Review Panel will establish those Federal regulations as maximum regulations in the States as well, unless some additional or more stringent State regulations meet review within this DOT panel.

PTCA is also a charter member of the Commercial Vehicle Safety Alliance. That establishes reciprocity for roadside inspec-

tions among the States. There are now 33 member jurisdictions, 31 States and two Canadian provinces. They have set up uniform critical item inspection procedures, and they have also discussed with the Bureau of Motor Carrier Safety setting up uniform State and Federal standard for out of service criteria.

In addition, under the Motor Carrier Safety Act, prosecution of safety violators has become easier. As you mentioned, Mr. Chairman, the DOT can now assess civil fines on violators. Those fines go up to $25,000 for knowing and willful violations where there has been a death or serious personal injury.

There are also a couple of safety initiatives in the private sector that I want to emphasize. We have mentioned that the driver-related causes account for somewhere between 85 and 90 percent of all accidents. We feel a need to concentrate on the training and the qualifications of drivers. I think that is paramount in any kind of safety related program.

The first initiative is the Professional Truck Drivers Institute. It was founded by the Trucking Industry Alliance, which is a group that includes the Teamsters, the ATA, the Private Truck Council, Motor Vehicle Manufacturers Association and many other trucking related groups. We are trying to bolster the professional status of drivers through standardized training and certification programs. It is based on the mechanics certification program that I think has been in place since the mid-1960's.

The second initiative in the private sector is a national telecommunications network for information exchange among the States. We are trying to ensure that a commercial motor vehicle driver has only one license and to ensure that a complete driving record is available both to other States and to prospective employers. We want the record that you get from States on a driver to mean something rather than just being a haphazard collection of those violations that may have made his record.

On behalf of the trucking and the insurance industries, the American Association of Motor Vehicles Administrators is in the process of contracting out a cost-benefit study to show how this telecommunications system would work. We hope to begin implementation in the States by as early as 1987.

And finally, I want to address some points on safety and deregulation that have come up. We have talked a lot about this 18 percent increase in truck accidents from 1983 to 1984. I am not going to tell you that I think they are a blip, but I do not know how we can describe them. I do not know that we can say that deregulation has caused them or that overcapacity on the highways has caused them or that there is some other combination of factors that might have caused this increase.

As regards deregulation, in 1979, the last year that we had full regulation of motor carriers, fatalities and injuries for truck accidents were at an all time high. They have never approached that level since deregulation.

I think this broad number of accidents that the BMCS puts out each year—that is where the 18-percent increase comes from—does not really accurately reflect the number of accidents since it is not a frequency number, it is simply raw accident data, and it does not reflect the number of miles that are traveled. Bureau of Motor Car-

rier Safety has indicated that over the period from 1979-84, the frequency of accidents has remained very steady at about 1.1 accident reported for every million miles traveled. I think that is a much better indicator of the safety of trucks on our highways than the raw numbers themselves.

Finally, I would just like to encourage you to treat safety and economic regulations as two separate issues. We address safety through increased enforcement as we discussed. I think this committee would be very ill-advised to jump to any conclusions about economic regulatory policy based on the available accident data.

Thank you.

[The statement follows:]

STATEMENT OF RICHARD P. SCHWEITZER, LEGISLATIVE COUNSEL, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. Chairman and members of the committee, my name is Richard P. Schweitzer; I am Legislative Counsel for the Private Truck Council of America, Inc. (PTCA). With me today is PTCA Executive Vice President Richard D. Henderson. We appreciate the opportunity to discuss with the committee how the Motor Carrier Safety Act of 1984 ("the Act") is being implemented, and how safety issues in general are being address in the trucking industry.

PTCA is an independent national organization representing the interests of non-transportation companies that operate private truck fleets. Our membership consists of approximately 1,800 companies comprising a cross-section of manufacturing, processing and retailing industries, and includes a substantial number of Fortune 500 companies as well as many small concerns.

Trucks haul over three-quarters of the nation's freight, and private carriage is generally recognized as the largest segment of the trucking industry. About two-thirds of the intercity freight that moves by truck is hauled by private carriers.

UNIFORM SAFETY REGULATIONS

One of the congressional findings contained in the Act is that "improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations . . ." Toward this end, the Act gave the Department of Transportation authority to impose civil fines for violations of the Federal Motor Carrier Safety Regulations. In addition, the act established a procedure for review and preemption of state safety regulations that the Secretary determines are more stringent than or in addition to the federal rules, and that either provide no safety benefit, are incompatible with the federal rules, or present an undue burden on interstate commerce.

As this review procedure is implemented, along with the Motor Carrier Safety Assistance Program (MCSAP), major strides will be taken towards establishing a nationally uniform set of state and federal motor carrier safety regulations and a strengthened enforcement mechanism. MCSAP, a federal safety program contained in the Surface Transportation Assistance Act of 1982, provides grants to states to enable them to adopt the federal safety regulations and to train state personnel in federal roadside inspection procedures.

Prior to MCSAP, only about ten states had viable safety regulations and enforcement programs; perhaps 20 others had some token set of regulations with little enforcement. In many states, for instance, private carriers were not subject to any state safety regulations whatsoever. If private carriage operations did not cross state lines, there was no means of ensuring the safety of those vehicles and drivers.

Under MCSAP, in fiscal year 1986 some 48 states will receive grant money for increasing state safety enforcement. Thirty-eight of those states will receive implementation grants; the other ten will receive preliminary, development grants. If the program continues as anticipated, over the next several years virtually every state will have both a complete set of safety rules and an effective enforcement program. So far, over 1,500 state enforcement officers have been trained in federal roadside inspection procedures—this is an increase of more than ten-fold over the number of federal safety inspectors on the roads.

If all or most states participate in MCSAP, the federal safety regulations will be in force in those states, at least as minimum requirements. Under the review and

preemption procedures of section 208 of the Motor Carrier Safety Act, the federal rules adopted by the states will also be maximum standards except for additional or more stringent requirements that meet the Secretary's tests for review. The result will be a single set of motor carrier safety regulations, applying both to interstate and intrastate operations in place across the country.

As an aside, we are pleased to note that the Department of Transportation has called for funding of MCSAP at the full authorization level for fiscal year 1986. The enacting legislation authorized $30 million for FY '86; the House has appropriated $14 million (the same amount as the actual FY '85 appropriation) and the Senate has appropriated $20 million. According to DOT, state grant requests for FY '86 amount to $25 million, so an additional increase in the appropriation is not only authorized, but necessary as well.

The inspection reciprocity program established by the Commercial Vehicle Safety Alliance (CVSA) is also contributing to uniform enforcement of state safety regulations. CVSA member states have adopted a critical item inspection program for roadside inspections whereby the equipment items most likely to cause serious accidents or breakdowns are checked. This allows the states to inspect the most important items on the greatest number of vehicles. Once a vehicle is inspected, it receives a decal that exempts it from further inspection for up to 90 days unless there is an obvious defect in the equipment at a subsequent roadside inspection site. Thus, vehicles are not subject to repetitive inspections each time they cross a state border.

CVSA now has 30 member jurisdictions—PTCA is a charter associate member. In addition to the inspection reciprocity program, CVSA has been meeting with representatives of the Bureau of Motor Carrier Safety to develop uniform out-of-service criteria and uniform hazardous materials inspection criteria. As more states join CVSA, and as CVSA and BMCS coordinate criteria for safety regulations, enforcement of truck safety should be more efficient and provide a single set of rules for carrier compliance.

PRIVATE SECTOR SAFETY INITIATIVES

PTCA firmly believes that the most effective way to improve truck safety is to take the unsafe driver off the highways. Driver-related causes account for approximately 85–90% of all truck accidents. Therefore, it is critical that truck drivers be qualified, trained, rested, sober and cautious in the operation of their vehicles. PTCA has embarked on two specific initiatives to address the need for increased driver safety.

One is the Professional Truck Driver Institute, founded under the auspices of the Trucking Industry Alliance, an association of trucking industry, supplier and labor organizations. The Institute is an attempt to bolster the professional status of the truck driver through standardized training and certification programs. The concept is based on the National Institute for Automotive Service Excellence, under which automotive mechanics are currently certified. Eventually, we intend to have truck driver training schools adopt the training and testing standards established by the Institute. In this way, new drivers will have met a minimum level of competence before they are certified by the school. Carriers can be assured that a certified driver applicant has had basic driver training and passed a certification examination and road test.

PTCA is also participating in an effort to establish a national telecommunications network, administered by the states, with which the states could electronically share commercial driver licensing and motor vehicle record information. The immediate goal is to develop a system that would permit a state to determine whether an applicant for a commercial driver's license already holds such a license in another state, and would permit a potential employer to have access to a complete motor vehicle record for any driver applicant.

The new system is expected to supplement the National Driver Register (NDR), which was established by Congress in 1960 and computerized by 1982 legislation. However, the NDR computer network is only now being a four-state pilot program, with limited information available; a national system will not be in place until 1992 at the earliest. It is expected that the new telecommunications system will provide more information to both state administrators and trucking industry management, have a faster turnaround time for requests within the system, and be on-line nationally much sooner than the NDR.

Additionally, this new system will use a unique personal identifier to establish the identity of a commercial truck driver. The NDR still uses name, address and social security number to make probable identifications. All of this data can be forged by an unscrupulous driver. We are exploring the use of digitized fingerprints

or retinal imagery in order to positively identify a driver. We hope this program will get rid of drivers with more than one license, and drivers with "hidden" moving violations in a number of states.

We are presently organizing a cost/benefit and system design study for this system; the study will be contracted out by the American Association of Motor Vehicle Administrators. The study results will be in mid-1986; if its conclusions show a system that is both feasible and cost effective, as we expect, implementation will begin in the states as early as 1987.

SAFETY AND ECONOMIC REGULATIONS

Some commentators have argued that the partial economic deregulation of the trucking industry under the Motor Carrier Act of 1980 has led to a breakdown in motor carrier safety. The argument goes like this: The increased competition generated by open entry into trucking markets has caused carriers to cut operating costs in order to offer discounted rates. This has led to neglect of equipment maintenance and to drivers exceeding the hours of service regulations. Advocates of this position point to the increase in accident statistics from 1983 to 1984 as evidence of the decline in motor carrier safety. PTCA takes issue with the assumptions made and the use of these statistics to promote economic regulation of trucking.

National accident data as provided by the Bureau of Motor Carrier Safety is as follows:

	1979	1980	1981	1982	1983	1984
Accidents	35,541	31,389	32,306	31,759	31,628	37,323
Fatalities	3,072	2,528	2,810	2,479	2,528	2,786
Injuries	32,126	27,149	28,523	25,779	26,692	29,650

First of all, this data is compiled from carrier reports of accidents as required in the federal safety regulations. There is no indication from BMCS on the compliance rate for accident reporting, or whether compliance rates increase or decrease from year to year. In addition, the regulations require that all accidents resulting in property damage over $2,000 must be reported to BMCS. With inflation, more accidents will meet the $2,000 reporting threshold each year; even if the actual number of accidents remains the same, the number of reported accidents should increase from year to year in proportion to the rate of inflation.

A cursory view of the accident data above shows that the raw number of reported accidents jumped 18% between 1983 and 1984, from 31,628 to 37,323. However, this alone does not mean that deregulation is the cause of the increase, or that motor carriers are less safe today than they were in a fully-regulated environment.

The last year under complete economic regulation was 1979—reported accidents totaled 35,541 for that year. In the four ensuring years under deregulation, the number of reported accidents remained at a substantially lower level than in 1979. Using the argument that competition and lower profits result in a decrease of safety, one would assume that the recession years of 1982 and 1983 would show a large jump in reported accidents. Yet data for those years shows reported accidents at a lower level than under regulation.

Also, the fatality and injury data for 1979 is an all-time high. Even the statistics for 1984, when there was an increase in reported accidents above the 1979 level, show fatality and injury data well below the levels of 1979. While there were more reported accidents in 1984 than in 1979, the 1984 accidents appear to be less severe than those in 1979.

PTCA believes it is irresponsible to use this data to try and "prove" any particular theory, particularly with regard to economic regulation of trucking. The limitations of the data itself, along with other factors such as overcapacity on many highway segments, dilutes any conclusions about cause and effect that may be taken from these numbers. Our experience has been that accidents fluctuate with the level of economic activity; as the number of miles driven increases, the number of accidents increase. Since the BMCS data does not show accident frequency per million miles, we cannot determine whether accident rates have gone up or down. The economic recovery of 1984 could account for at least some of the increase in reported accidents over 1983.

PTCA does believe that motor carrier safety must be a top priority with both industry and government. We support increased enforcement of existing federal regulations, and even supported the higher civil fines contained in the Motor Carrier

Safety Act as a means of communicating the federal government's commitment to truck safety. We applaud the increased funding of the Motor Carrier Safety Assistance Program and the cooperative efforts between BMCS and Commercial Vehicle Safety Alliance. Our members are committed to the Driver Institute and expedited development of a system to exchange license and driving record information among the states. Through these programs we are all renewing our concern with highway safety—at next year's oversight hearing I hope to report that these efforts continue, that we are making progress, and that lives are being saved because of it.

Thank you for your time and attention.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question 1. The states believe generally that the federal government should not have the power to preempt state safety regulations which have no safety benefit or create an undue burden on interstate commerce. What is your opinion of this view?

Answer. PTCA believes it is difficult for the states to justify retention of state motor carrier safety regulations that provide no safety benefit or place an undue burden on interstate commerce, just for the sake of preserving state jurisdiction. The Council's position is that uniformity of safety regulations, both from state to state and federal vis a vis state, will facilitate interstate trucking and encourage overall compliance by establishing a single set of regulations to follow.

When the Motor Carrier Safety Act of 1984 was under discussion in the 98th Congress, groups representing state interests (the National Governors' Association, National Conference of State Legislators, National Association of Regulatory Utility Commissioners) opposed any federal preemption provision in the legislation by claiming that states were better able to regulate safety within their own borders than the federal government. The states asserted that their knowledge of local geography, climate, road systems and economic conditions would result in truck safety regulations more responsive to local needs.

However, Congress rejected that argument, in part, and enacted a compromise provision that established a panel to review all state safety laws. The panel is to recommend preemption of those state regulations in addition to or more stringent than the federal rules, and that have no safety benefit, are incompatible with the federal laws, or that place an undue burden on interstate commerce.

For the states to argue that the federal government should have no authority to preempt state regulations, regardless of the lack of safety benefit or the burden on interstate commerce, is to change from a "safety" argument to a "turf" argument. The states are simply asserting that truck safety regulation is their "turf" and that the federal government should not invoke exclusive jurisdiction. There is no longer any pretense of superior state ability to establish regulations reflecting local requirements and conditions.

The "turf" argument is obviously unfounded. It is well settled that Congress may invoke exclusive jurisdiction over regulation of interstate commerce under the Commerce Clause in Article I, Section 8 of the United States Constitution. There is a substantial federal interest, as stated in the purposes of the Motor Carrier Safety Act, in developing a nationally uniform set of motor carrier safety rules applicable to interstate commerce. The committee should not be swayed by the states' rather transparent efforts to accumulate power at the expense of the national economy.

Question 2. In your view, are there any other federal initiatives which should be undertaken to address further the motor carrier safety problem?

Answer. The most effective way to address the motor carrier safety problem is through increased application and enforcement of the Federal Motor Carrier Safety Regulations. The Motor Carrier Safety Assistance Program ("MCSAP") is designed to meet this objective by encouraging the states to adopt the federal safety rules and by providing training for state enforcement personnel in roadside inspection procedures.

By increasing the number of officers conducting roadside inspections by over ten times, MCSAP will substantially increase the chances of a carrier getting "caught" with substandard equipment or drivers in violation of the hours of service regulation. Without a significant threat of enforcement, all federal safety rules are reduced to the level of "guidelines."

PTCA endorses the recent statement by the Secretary of Transportation to ask for $50 million in MCSAP funding for fiscal year 1987, and to put the program on contract status. Contract status will streamline implementation of the program by re-

moving it from the appropriations process. Once the authorization is made by Congress, the funds can be used by DOT immediately, without the political uncertainty of another round of appropriations proceedings.

Question 3. Some groups support inclusion of all private motor carriers under the safety fitness procedure provision of the 1984 Act. What is your position on this proposal?

Answer. Section 215 of the Motor Carrier Safety Act requires DOT and ICC to establish a procedure for determining the safety fitness of owners and operators of commercial motor vehicles, including specific initial and continuing requirements to be met to prove safety fitness. The Commerce Committee report on the legislation indicates that the initial and continuing safety fitness requirements are applicable to carriers seeking new or expanded common or contract authority.

As you know, PTCA has been a strong supporter of government and private sector initiatives to enhance motor carrier safety, and our organization lobbied heavily for passage of the Motor Carrier Safety Act. However, we have seen no data indicating that the safety record of private fleets is in any way worse than that of regulated fleets so as to warrant preoperation safety fitness determinations for private carriers.

Without some information documenting the need for safety fitness tests private carriers up to the safety record of for-hire carriers, we hesitate to endorse this proposal.

Second, assuming for the sake of argument that unregulated carriers are less safe than regulated carriers, PTCA is skeptical that any preoperation fitness determination (even with ongoing requirements) can make a meaningful improvement in the safety of trucking operations. As the present personnel and budget allocations for the ICC and the Bureau of Motor Carrier Safety are adequate only to provide a cursory review of safety fitness for applicants for operating authority, we believe the funding and manpower needed for a substantial effort in this area would be better spent on roadside inspection programs. Whether or not a carrier meets an initial safety fitness test has little relation, we believe, to the conduct of his fleet operations. Roadside inspections are designed to affect the actual trucks on the highway, not a paper program in a safety fitness application.

In addition, there are several hundred thousand existing private carriers with trucks on the roads already. Would DOT be willing to conduct an actual review and make a determination of the safety fitness of every one of these fleets? Or would a grandfather clause be enacted, with the regulations applicable only to new private fleets? The cost of a retrospective review of all existing carriers would be monumental, if conducted with enough care to be meaningful. It seems ill-advised to undertake such a tremendous expense without hard data to show that a problem exists and that such a regulatory solution would accomplish the objective of increased safety.

Finally, we are waiting for the proposed rule from DOT and ICC before making any policy judgment regarding application of the standard to private fleets. We cannot honestly evaluate what we have not seen.

Question 4. The ability to obtain adequate levels of liability insurance coverage has become a serious problem for trucking companies. In your view, has economic deregulation of the trucking industry contributed in any way to the current insurance crisis?

Answer. PTCA has several commercial auto insurance carriers as associate members. In discussions with these insurance companies it has become evident that accident and/or claims experience has little or nothing to do with the affordability or availability of motor carrier liability insurance.

These insurance companies insist that the shortfalls in coverage today are the result of falling interest rates over the past several years. As interest income has fallen dramatically, insurance companies have had to raise premiums (or in some instances, stop writing new policies) in order to keep exposure at reasonable levels.

In addition, insurance companies are extremely wary of the "environmental restoration" coverage required by Section 30 of the Motor Carrier Act. It is unknown how expansively courts might interpret this concept, and the prospects for injury and liability some 10, 20 or more years after a vehicle accident (due to a discharge of toxic materials, for instance, into soil or groundwater) makes it difficult for insurance companies to predict losses with any certainty.

Also, it is important to note that private carriers have not been affected by the insurance "crisis" to the same extent as for-hire carriers. While private carriers do carry the same amounts of coverage as for-hire carriers, even though there are no federal coverage minimums for private carriers of non-hazardous materials, private fleet insurance is usually included in an overall corporate umbrella policy that

covers the entire manufacturing, retailing or other primary business. Thus, private fleets as a rule do not buy trucking insurance separately, or as the main component in a corporate policy, as do for-hire carriers. Private fleets spread their risks around the entire corporate operations. Also, many large companies are self-insured up to certain levels, and are therefore unaffected by premium increases.

As a result, private fleets are less traumatized *at present* by the volatile insurance market. There have been premium increases for many PTCA members in the past year, but availability does not yet seem to be a problem—while it is more expensive, coverage is available to virtually all private carriers under "assigned risk" pools. However, in the next year or so there is a possibility that insurance may be unavailable or unaffordable even for private carriers.

If anything, the difficulty in obtaining insurance has become the new barrier to entry in the for-hire trucking industry. The ICC has revoked several thousand certificates of operating authority for non-renewal of insurance (although we understand the ICC now claims it has no authority to revoke authority for lack of insurance). Carriers unable to secure coverage are barred from legal operation in interstate commerce. Private carriers with sufficient coverage, though, still are able to receive supplemental for-hire authority, and we believe comprise the largest share of new entrants operating as for-hire carriers.

PRIVATE TRUCK COUNCIL OF AMERICA, INC.,
Washington, DC., October 29, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: In response to your question this morning at the Motor Carrier Safety Oversight Hearing regarding the need for a Motor Carrier Administration with the Department of Transportation, the Private Truck Council of America differs from our colleagues in the bus and truck industry.

We believe that the Bureau of Motor Carrier Safety is misplaced within the Federal Highway Administration, and that BMCS needs a substantial increase in funding, visibility and personnel in order to meet its obligations of enforcing motor carrier safety. However, this can be accomplished without establishing an entirely new modal administration within DOT.

It is doubtful that a Motor Carrier Administration would not create new jobs and increase the budget at DOT. Given the current federal deficit, we are reluctant to endorse any new bureaucracies if an alternative will accomplish our objectives. In this case, the organizational problems suffered by BMCS can be eased without a wholesale rearranging of the DOT. Concentrating on the functional needs of safety enforcement, rather than changing an organizational chart, will serve to bolster the effectiveness of BMCS.

Sincerely,

RICHARD P. SCHWEITZER,
Legislative Counsel.

The CHAIRMAN. Thank you, sir.

Mr. Sherlock.

Mr. SHERLOCK. Thank you, Mr. Chairman.

We appreciate this opportunity to testify on behalf of our 3,500 members.

With me is Robert Forman, who is chairman of the association's safety committee. He is also a member of the motor carrier regulatory review panel which was established to oversee the development of uniform State safety requirements.

The bus industry is justifiably proud of its safety record. Today the bus is the safest means of passenger travel, and we want to see that that continues. We are very concerned, however, about what the impact of unsafe operators could be on the industry and on public acceptance of bus transportation. Your dedication to public safety has been made apparent, so we regard ourselves as working partners in this matter.

There are seven things that we would like to see you focus on. First, comprehensive enforcement. All buses which operate on the

Nation's highways should be required to be safe and adequately insured. There are hundreds and hundreds of bus operators who evade Federal enforcement, and the two regulatory bodies do virtually nothing about that.

We hear too often that it would be difficult to carry out enforcement or that they are not within the scope of regulation because they are not certificated. Consequently, enforcement efforts focus on legitimate certificated bus companies because they can be easily found, overlooking the illegal operators who do not bother to get authority, do not carry adequate insurance, and do not have any regard or measures for safety.

A recent Florida incident illustrates what we mean. An unauthorized carrier operating interstate with a driver who had a long record of violations had an accident which injured 19 people. When State authorities in the wake of that accident began to investigate noncompliance, they found in a city in the Southeast that two-thirds of the interstate charter operators who were in the Yellow Pages did not have any operating authority at all. This kind of thing must be stopped.

Second, fitness enforcement. With deregulation in 1982, the Congress initiated a new competitive environment for the bus industry, but it was apparent that you meant for safety to be upheld. However, that mandate has not been carried out as it should be. As a result, you inserted section 215 in the safety bill requiring the two regulatory bodies to promulgate meaningful standards and procedures to enforce them. This has not been done.

So even with carriers who are willing to legitimize their operations and enter the business, the enforcement job simply is not being done adequately.

Third, appropriations. We suggest that the Congress focus on appropriations for these two bodies. They are justifiably handicapped by the lack of funds and personnel in some areas, although we would not regard that as a carte blanche excuse for noncompliance and nonenforcement. MCSAF absolutely must be funded properly if we are to achieve the objectives that we have to reach.

Fourth, insurance requirements. The bus industry has suddenly been confronted with drastically increased premiums for liability insurance. Despite this, we have not backed away from supporting Federal minimum standards of at least $5 million. We are concerned, however, about enforcement. We accept the reality of higher costs and the possible short-term dislocation for the long-term good of the industry and the public. It is essential, though, that the regulatory bodies deal with uninsured and underinsured operators. They should not be allowed to run or they wil have a big and unfair advantage over legitimate carriers who are in compliance.

What can this committee do? Make sure that the ICC and the DOT work closely with us and with you in a strong enforcement program. Compel the ICC to adopt the expedited revocation procedures that were proposed 3 years ago, in order to be sure that violators are taken out of service. Pass legislation requiring that all buses which operate interstate meet the $5 million Federal standard and carry proof of it in each bus.

Finally, anything that we and you do to place a premium on safety and penalize the lack of it will be helpful. Currently we do not see that insurance premiums are correlated to safety awareness or safe operation, but the dynamics of the marketplace will ultimately force that reality and some adjustment.

Fifth, the structure of the Bureau of Motor Carrier Safety. The addition of an Associate Administrator to place greater emphasis on motor carrier safety is a significant step forward. However, we still believe it is necessary to create a motor carrier administration within DOT that would take the BMCS out from under the Federal Highway Administration and give it a separate, focused identity.

Sixth, non-Federal efforts. We recognize that Federal agencies cannot carry the enforcement alone. The States and voluntary bodies will have to play a role. The commercial vehicle safety alliance has become the focus of progressive inspection and enforcement activities. Some 34 States and Canadian provinces have banded together into a uniform reciprocal program that should be strongly supported.

We urge you to provide some funding from the Department of Transportation to support the continuing activities of the Commercial Vehicle Safety Alliance.

And finally, whistleblowers. Section 212 of the Motor Carrier Safety Act calls for a study of a system to protect employees who complain of a safety violation against a company. We continue to feel that there is no need and no justification for such a provision.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF NORMAN R. SHERLOCK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN BUS ASSOCIATION

I appreciate the opportunity to be here today to discuss Federal safety enforcement and implementation of the Motor Carrier Safety Act of 1984. Joining me today is an acknowledged safety expert, Robert J. Forman, Vice President of Safety for Trailways. Mr. Forman is Chairman of the ABA Safety Committee and is also a member of the Motor Carrier Regulatory Review Panel, which was established by MCSA.

The Motor Carrier Safety Act was a milestone in federal safety legislation in that it created a comprehensive framework for rational and effective federal and state motor carrier safety regulation. The ABA strongly supported enactment of MCSA, and I believe that this Committee should be justifiably proud of its work.

However, the first year of MCSA implementation has been characterized by unacceptable delays in several areas. Moreover, the past year has shown that additional administrative and legislative action outside of MCSA is needed to ensure safe operation of all motor vehicles and the financial responsibility of the operators of those vehicles. I would like to address the major implementation and additional action issues from the perspective of the intercity bus industry.

I. SAFETY FITNESS CONTINUES NOT TO BE A MEANINGFUL ENTRY TEST INTO THE BUS INDUSTRY

Under 49 USC Sec. 10922, as amended by the Bus Regulatory Reform Act of 1982, the ICC is authorized to issue operating certificates to all types of interstate bus carriers only if the Commission finds that the involved carrier "is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission . . .". The terms fit, willing and able" are defined by the BRRA to mean "safety fitness and proof of minimum financial responsibility under Section 18 of the Bus Regulatory Reform Act of 1982". Because ICC utilization of this safety fitness standard was virtually non-existent, at least us to bus carriers, Section 215 of MCSA required the Secretary of Transportation, in cooperation with the ICC, to develop standards and procedures for meaning-

full evaluation of new and existing carriers' safety fitness prior to the granting of operating authority. The procedure established is to be sent to Congress no later than one year after the enactment date of MCSA, or October 30, 1985.

As of October 24, 1985 the proposed procedures had not even been published in the Federal Register for public comment so their final adoption is still at least several months in the future. the lack of effective safety fitness standards is a particular problem for buses. After all, we are transporting the most precious commodity, people. Yet since enactment of the BRRA three years ago, the ICC has granted almost 4,000 bus carrier operating authority applications, and to my knowledge, has not denied any such applications on safety fitness grounds.

This situation cries out for prompt action. We are aware that the Bureau of Motor Carrier Safety has informally developed a Section 215 action plan, and we are eager to provide comments on that plan. We urge the Committee to take appropriate steps to encourage the prompt publication of the proposed rules and the expeditious adoption of final rules.

We emphasize that the BMCS personnel handling the Section 215 rules and the other MCSA provisions have worked diligently to implement the Act; however, it appears that MCSA implementation is being adversely affected by inadequate staffing levels at BMCS. We suggest that the Committee look closely at whether sufficient personnel have been allocated to BMCS to carry out these important tasks.

II. FEDERAL SAFETY ENFORCEMENT OVER UNCERTIFICATED CARRIERS IS TOTALLY INADEQUATE

The new Motor Carrier Safety Regulations to be promulgated unde MCSA apply to all motor vehicles of passengers in interstate commerce except those with fifteen (15) passengers or less. This includes not only private motor carriers of passengers, but "for hire" carriers that are operating without ICC or state certificates. In all likelihood, this group of uncertificated carriers is much larger than the certificated group.

A recent accident in Florida points to the tip of what we believe to be a very large iceberg. An unauthorized passenger carrier, engaged in interstate commerce, employing a drive who had a long record of violations, had an accident which injured some 19 passengers, several seriously. Their investigation of this accident led state authorities to survey those carriers listed as charter operators in the Atlanta area yellow pages. It turned out that only one-third of these carriers were certificated by either the ICC or the Georgia Commission. A similar situation exists, we submit, throughout the country.

The safety fitness standards and procedures contained in section 215, and any ICC-DOT alliance to enforce those standards, will not reach any of these uncertificated carriers since they have not and will not apply for interstate authority.

It is left to BMCS audits and investigations to ensure that uncertificated carriers comply with federal safety regulations. If the BMCS is unable now to examine all certificated carriers regularly, which we believe to be the case, it certainly will be outside of their capability to locate and audit the thousands of private and uncertificated "outlaw" carriers that now must comply with federal safety regulations.

This is a priority issue for the Committee to address. MCSA will become a paper tiger if there is no effective enforcement against most carriers. Moreover, failure to enforce the law against uncertificated carriers puts certificated carriers trying to comply with the law at a major financial and operational disadvantage. It will thus encourage the certificated carriers to evade certification procedures in the future.

III. INSURANCE ENFORCEMENT MUST ALSO BE IMPROVED

Enforcement of adequate insurance standards goes hand in hand with effective safety regulation. The public must be protected both from unsafe operations leading to accidents and financial irresponsibility leading to uncompensated damages after an accident occurs.

In testimony last week to this Committee's Surface Transportation Subcommittee, we listed a number of steps that should be taken by Congress, the ICC and the DOT to improve insurance regulation; today I would like to emphasize several points that are related to DOT's MCSA enforcement activities.

Section 18 of the Bus Regulatory Reform Act requires that as of November 19 1985 all for hire motor carriers of passengers operating vehicles with a seating capacity of more than fifteen (15) passengers in interstate commerce must have $5 million dollars of public liability insurance or surety bond. This doubling of the insurance minimum requirement is coming just as our industry is facing a crisis in escalating insurance premiums.

We strongly support the new statutory minimums, but we are greatly concerned that inadequate enforcement will create a substantial disadvantage for those carriers that seek to comply with the law and will encourage carriers to avoid compliance. This is a particular problem with regard to uncertificated, for hire carriers. At present, DOT audit and investigation procedures do not provide any effective mechanism for monitoring compliance by uncertificated carriers.

To remedy this defect, ABA has just filed with the Department a rulemaking petition requesting the implementation of a DOT requirement that all uncertificated, for hire bus operators carry in their vehicles a certificate of insurance indicating that they have insurance coverage in effect which meets the statutory minimums. We hope that the DOT will implement this rule expeditiously because it is an urgently needed enforcement rule.

There is another effective enforcement mechanism that already exists; unfortunately it has never been used. Section 18 of the BRRA empowered the Secretary to assess civil penalties of up to $10,000 dollars per day for carriers who knowingly violate the insurance minimum standards. Although this provision has been in effect for three years, we are not aware that any fines have been levied or even proceeding instituted under it.

It would only take several such cases to get the message across to the bus industry that DOT is serious about enforcing its insurance standards. These actions can be commenced almost immediately against certificated carriers without adequate insurance on file, and once uncertificated carriers are required to carry their certificates of insurance in their vehicles, these civil penalty proceedings can also be used effectively to force compliance by uncertificated carriers. Because these civil penalty proceddings are the primary insurance enforcement mechanism, we urge this Committee to monitor closely these proceedings and to require periodic status reports from the Department on the number and outcome of the Section 18 civil penalty cases that they have instituted.

Finally, we recommend that legislation be adopted making the insurance minimum standards applicable to all commercial motor vehicles carrying passengers, as defined by MCSA. MCSA applied its safety requirements to all "commercial motor vehicles operating in interestate commerce to transport passengers or property" (49 U.S.C. Sec. 2503).[1] Thus the federal safety rules now apply to all buses whether or not they are certificated *and* whether or not they are operating "for hire" service.

By comparison, Section 18 of the BRAA applies the minimum insurance requirements only to "for hire" passenger motor vehicles operating in interstate commerce. The insurance requirements thus do not apply to "not for hire" passenger motor vehicles operated by churches or social groups, even though these vehicles now are covered by federal safety requirements.

This dichotomy makes no sense. This Committee determined, and we believe properly, that the public interest required that all buses, both "for hire" and "not for hire" should be covered by federal safety standards when operating in interstate commerce. For the same reason, these vehicles should be held to the same federal insurance standards when operating in interstate commerce, and we urge this Committee to adopt legislation accomplishing that result.

IV. MCSA REFORMS ARE MOVING SLOWLY

With regard to the remainder of MCSA reforms, it is too early to draw any substantive conclusions concerning their effectiveness. However, it is clear that the implementation process is moving forward very deliberately, and there has been, and will continue to be problems in meeting statutory deadlines. Again, we want to emphasize that BMCS personnel have been working diligently to accomplish their tasks, and we are encouraged by the recent appointment of an Associate Administrator for Safety. This appointment symbolizes a greater commitment to safety administration and enforcement, but we are very concerned that BMCS is understaffed to carry out its new and pre-existing administrative enforcement activities. It would be helpful for the Committee to look closely at the adequacy of these personnel levels.

Turning to specifics, Section 206 of MCSA requires the recodification within 18 months of all Federal safety standards for commercial motor vehicles. This is an enormous undertaking, and BMCS has made great progress in its revision and recodification efforts. But the results must still go through a formal rulemkaing or

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[1] There were certain exceptions to this definition, but the only bus exception was for vehicles designed to transport fifteen (15) passengers or less.

rulemakings, and it is difficult to see how this process will be completed within the next six months.

The timely adoption of revised federal regulations is critical to the effort to bring about state safetry regulatory uniformity embodied in Sections 207-209 of MCSA. This five year process has really just started. The Commercial Motor Vehicle Safety Regulatory Review Panel established by Section 209 has been appointed, and we are delighted that Bob Forman, the Chairman of the ABA Safety Committee, is the bus industry representative on the panel. Uniformity of state safety regulations is a major issue for our industry, and Mr. Forman brings great expertise to this task. The process of gathering the state regulations is well under way, but no substantive actions can be taken by the Regulatory Review Panel until the new Federal safety regulations have been adopted.

Two very positive developments that will impact on the ultimate effectiveness of MCSA are the Motor Carrier Safety Assistance Program authorized by Title V of the Surface Transportation Assistance Act of 1982 and the growth of the Commercial Vehicle Safety Alliance. MCSAP has in less than three years provided the means for most states to become active and effective participants in the effort to regulate commercial motor vehicle safety. Moreover, becasue of the requirement to adopt the Federal Motor Carrier Safety Regulations as state regulations or to adopt "compatible" state regulations, a substantial measure of uniformity has already been achieved. The ABA strongly advocates full and continuing funding of MCSAP since it has to date been the key to developing an effective regulatory force—albeit state, not Federal in nature.

The Commercial Vehicle Safety Alliance has created the means to utilize the MCSAP funding in a productive manner. ABA has always been concerned about states unilaterally devising their own non reciprocal inspection programs, but with the Alliance, the member states collectively agree to uniform procedures and reciprocity of inspections.

CVSA has become the focus of progressive vehicle safety inspection and enforcement activities. It includes some 34 states and Canadian provinces in its uniform, reciprocal program, and in addition, BMCS works with the Alliance to promulgate standards which are acceptable both to the Federal DOT and the participating states.

CVSA type inspections, conducted roadside at destinations or in terminals are primarily critical item inspections. We believe that mandated annual inspection of buses can best be complemented through this type of critical item inspection. It is ABA's view that both forms of inspection are necessary to ensure compliance.

CVSA has proven to be a very effective organization, and with the growth of the Alliance has come a need to create the administrative office for the conduct of business such as handling inquiries, evaluating program activities, and expanding the scope of CVSA programs. Unfortunately, there is not now any committed funding source, and we urge that Federal DOT funding be provided to CVSA since it encourages effective, coordinated state action.

Finally, we continue to believe that Section 228 of MCSA, which extends the employee protection provisions of Part A, Title IV of the Surface Transportation Assistance Act of 1982 to bus industry employees, is unnecessary. We believe that there is no evidence of a problem with bus carriers discriminating against employees because they filed a safety complaint, and to the extent that there have been isolated cases, they already are covered by collective bargaining agreements. The effect of this provision is to impose more unnecessary regulatory and administrative burdens on bus operators, most of whom are small, family run businesses that cannot afford to deal with unnecessary regulation

By its terms, Section 228 does not take effect until two years after the MCSA enactment date, and within a year after that enactment date, the Secretary is to transmit to Congress the results of its study of whether the provisions of Part A of Title IV of the STAA should be extended to bus carriers. We are hopeful that in light of this study and the lack of evidence of a real problem, legislation will be enacted to remove the application of these provisions to bus carriers.

V. ABA HAS TAKEN SEVERAL ACTIONS TO MAKE SAFETY AND INSURANCE ENFORCEMENT MORE EFFECTIVE

Safe bus operation and operations conducted with adequate insurance are major concerns of the members of the American Bus Association. Thus we have taken a number of recent steps to deal with these concerns. We have met and corresponded repeatedly with DOT and ICC officials to set forth the concerns and proposals that we have outlined here today and in last week's insurance testimony. We expect to

continue to work with this Committee in your critical efforts to ensure that both the DOT and ICC effectively enforce safety and insurance requirements.

But we can't expect Government to do it all, and ABA has undertaken several programs to support this effort. First, we have rewritten our membership requirements to mandate that in order to qualify for membership an operator must show evidence of compliance with Federal insurance requirements. Second, we have adopted a Code of Ethics which provides in part that all members will "conduct our business and operations in a safe manner", and we have established an Ethics Review Board and ethics review procedure whereby the Board can take disciplinary action, including expulsion from membership, against ABA members that do not operate in a safe manner.

Another membership requirement that we have adopted is that our members agree to participate in the Association's safety awareness program. Our Association safety program is one in which we take great pride. It is headed by our Vice President of Safety, Jack Burkert, who is a certified safety professional.

The ABA safety program has set in motion a series of measures designed to improve, expand and direct safety activities for the intercity bus industry. Our approach is multi-faceted, but has at its heart the creation within every bus company of an ability to conduct its own safety activities in the most effective manner possible.

We have an extensive program of safety seminars intended to improve safety management skills, as well as raise consciousness on the particular demands of regulatory compliance and current safety issues. Our monthly Safety-Gram is a publication dedicated solely to the purpose of educating and informing our membership on the issue of Safety. It is unlike any publication ever produced within the bus industry. Drivers are also included within the scope of the ABA program. They are provided with monthly safety letters, included in safety awards program and driving skill contest and are trained with and by ABA materials and staff.

The intercity bus industry continues to be justifiably proud of its ongoing record of outstanding safety performance. According to the most recent data published by the National Safety Council (attachment 1), intercity bus service continues to be by far the safest means of highway passenger travel. But with several thousand new operators coming into the market because of the relaxed entry standards of the BRRA, it is critical for ABA to continue to give top priority to its self-help safety programs.

We hope that our efforts, coupled with the government programs already in place and the suggested additional government actions we have outlined today, will produce continued safe and properly insured bus services throughout the Nation.

Mr. Forman and I would be happy to answer any questions you might have.

Attachment 1

SUMMARY TABLE OF FLEET ACCIDENT RATES, 1982-1984
(FLEETS REPORTED IN THE NATIONAL FLEET SAFETY CONTEST)

FLEET DIVISIONS & GROUPS	YEAR - JANUARY 1, 1984 - DECEMBER 31, 1984				ACCIDENTS PER 1,000,000 VEHICLE MILES			
	NO. OF FLEETS	NO. OF VEHICLES	VEH. MILES (thousands)	NO. OF ACCIDENTS	1984	1983[a]	1982[a]	3 YEARS 1984-1982
GOVERNMENT DIVISION	7	6,018	66,692	589	8.83	9.48	10.32	9.71
Intercity	1	2,284	20,180	112	5.55	2.25	2.88	6.04
PETROLEUM DIVISION	30	3,832	148,428	264	1.78	3.37	3.65	2.58
Intercity Marketing	23	2,665	119,304	190	1.59	3.70	3.37	2.34
Production	3	535	9,536	29	3.04	3.53	2.78	3.14
Pipeline	3	810	18,682	42	2.25	2.52	3.53	2.81
PUBLIC UTILITY DIVISION	52	45,698	506,063	3,479	6.87	7.07	7.35	7.11
Electric Utility	48	44,590	494,015	3,353	6.79	7.04	7.48	7.11
Water & Communications Utility	6	1,108	12,047	126	10.46	7.36	6.38	7.12
SMALL FLEET DIVISION	8	66	3,148	6	1.27	2.69	2.56	2.14
MILITARY RECRUITERS DIVISION	11	5,635	71,559	332	4.64	3.64	4.84	4.39
MILK & ICE CREAM INDUSTRY DIVISION	20	572	12,226	11	.90	.89	.91	.90
Retail Truck	6	87	1,610	0	.00	.76	1.86	1.04
Wholesale Truck	11	395	7,185	9	1.25	.69	.32	.77
Over-The-Road Truck	3	67	2,031	1	.49	1.23	.92	.98
Small Fleet	6	63	1,598	1	.63	1.05	2.24	1.16
PASSENGER CAR DIVISION	46	6,785	122,046	563	4.61	4.32	4.01	4.29
Eastern Region	13	2,113	47,076	258	5.48	4.81	3.10	4.41
Western Region	29	4,635	74,402	305	4.10	3.95	3.58	3.90
POLICE DIVISION	19	6,390	138,265	1,600	10.13	12.70	14.00	12.43
Municipal Police	8	1,839	32,312	882	27.30	23.60	25.22	24.93
State Police	6	4,461	103,460	505	4.79	4.82	5.13	4.91
Motorcycles	4	86	394	11	27.95	28.47	33.44	30.80
Small Fleet	3	24	80	2	25.11	17.23	28.45	23.16
SCHOOL BUS DIVISION	19	894	10,953	71	6.48	10.30	8.35	8.74
TRANSIT DIVISION	31	5,376	168,314	6,225	36.98	38.89	46.14	40.47
TRUCK DIVISION	116	24,973	1,031,651	14,536	14.11	10.69	7.39	10.08
Intercity	76	8,208	715,914	2,192	3.06	2.65	2.61	2.74
City	25	16,665	308,344	12,348	40.05	36.15	34.56	37.23
Small Fleet	15	108	7,393	16	2.16	3.12	5.83	4.08
POSTAL SERVICE DIVISION	397	41,057	197,880	1,988	10.05	8.97	13.67	11.00
Intercity	11	575	7,647	85	10.83	9.33	7.93	8.33
City	89	8,332	67,729	680	10.19	9.36	15.42	11.97
Light Delivery Vehicles	230	30,547	107,638	1,116	10.37	9.56	13.91	11.24
Passenger Cars - City	46	1,576	14,202	98	6.76	6.17	7.53	6.17
AUTOMOBILE TRANSPORTERS DIVISION	92	17,362	1,011,076	6,131	6.06	5.64	6.88	5.55
Truckaway	18	9,375	566,443	3,445	6.08	5.68	6.92	5.57
Terminals	71	6,038	401,104	2,675	6.17	5.76	6.95	5.65
Driveaway	3	17,362	1,011,076	6,131	6.06	5.04	3.35	3.84
GAS INDUSTRY DIVISION	74	36,284	500,162	3,637	6.87	6.88	7.21	6.99
Gas Utility	45	23,740	268,151	2,481	9.25	8.82	9.27	9.11
Gas Transmission System	29	12,544	232,010	936	4.12	4.13	4.10	4.12
INTERCITY BUS DIVISION	141	6,658	540,191	2,291	4.24	4.14	4.56	4.33
Eastern Region	78	3,685	296,908	1,393	4.69	4.55	4.90	4.72
Western Region	54	2,649	229,008	843	3.68	3.67	4.10	3.88
Charter	17	324	14,275	55	3.85	4.46	3.23	3.91

[a]Data for the years 1983 and 1982 has been revised to conform to the revision of the National Fleet Safety Contest Rules that took effect January 1, 1984.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question 1. You express in your testimony your concern about the operations of "outlaw" bus companies. In your view, what would be the most effective means of stopping these illegal bus operations?

Answer. One of the most effective means for stopping these illegal bus operations would be the adoption by the Department of Transportation of the rule that we have proposed requiring all for hire bus operators to carry a certificate of insurance in their vehicle. This requirement would make the identification of under insured carriers much easier, and since the penalties for operating without the requisite insurance are so severe (up to $10,000/day), an effective apprehension program is likely to lead to a great reduction in uninsured or underinsured bus carriers. We believe that a great percentage of these carriers are also likely to be uncertificated.

Other than this, adequate enforcement personnel levels at the ICC and DOT coupled with a high administrative priority for the removal of illegal bus operators would help in achieving an effective program. Neither of these factors exists today.

Question. As you noted in your testimony, private bus operators are not included under the safety fitness procedure provision of the Motor Carrier Safety Act of 1984. How substantial is the safety problem posed by these carriers?

Answer. We believe that the problem is very substantial. Although there are no comprehensive statistics on the subject, our best estimate is that there are at least as many uncertificated bus carriers providing interstate bus service as there are certificated carriers. Many of these uncertificated carriers are "for hire" carriers, as opposed to private carriers. But whether they are private or "for-hire", they do not fall under the safety fitness procedure provision of the Motor Carrier Safety Act of 1984 if they are uncertificated.

The problem of the uncertificated carrier, whether "for-hire" or private, is serious enough that this is where the focus of safety enforcement should be both by the DOT and ICC.

Question. Your testimony makes it clear that the intercity bus industry is in the midst of a serious insurance problem. In your view, to what extent, if any, has economic deregulation of the intercity bus industry contributed to the current insurance crisis?

Answer. Economic deregulation of the intercity bus industry has not contributed substantially to the insurance crisis that the intercity bus industry now faces. The insurance crisis has been caused by the fact that there are very few insurance companies that write substantial amounts of liability insurance for interstate bus carriers and the fact that these few companies have decided to increase their revenues substantially by increasing bus rates by an average of 200 percent.

One might speculate that bus deregulation has caused an influx of new carriers that place less emphasis on maintenance and thus have a poorer safety record. But the evidence that we have compiled and that has been compiled by the National Safety Council indicates that the intercity bus industry's accident record has stayed basically unchanged for the last three years, as has the dollar amount of insurance claims per vehicle.

Deregulation does exacerbate the problem created by the insurance crisis. Deregulation has created much more competition, which has reduced bus companies' profit margins and has made it more difficult for these companies to survive the tripling in their insurance rates that most companies are experiencing.

The CHAIRMAN. Thank you, sir.

Mr. Smith?

Mr. SMITH. Mr. Chairman, first of all, we want to congratulate you on bringing about the 1984 Motor Carrier Act, and at the same time, we want to congratulate you for bringing about the wonderful I–70 series that was just played last week.

The CHAIRMAN. It was wonderful, but it could have been even better.

Mr. SMITH. And what we wanted to do is to celebrate this, we brought our first team safety hats that are worn by thousands of bus drivers across the United States, and as you can see, they are the royal blue of a city called Kansas City, and these are for the staff.

The CHAIRMAN. Well, I am delighted.

Mr. SMITH. We are the first team for better bus safety, and we thought we would like to celebrate that this morning with you, sir.

The CHAIRMAN. Thank you very much.

Mr. SMITH. We do have some serious comments to make about the oversight hearing this morning.

We are a firm believer in safety. We have been for 15 years. We have six full-time safety cars on the road, Senator, that are out there day in and day out checking with all of our 2,300 bus companies.

What I wanted to do this morning was to take 1 month of safety checks that are done by the safety inspectors, this one particular inspector did 86 bus inspections, and you can see there is a great deal of work done on these inspections, and he found that out of these 86 that were inspected, that 85 were safe and 1 had an out of service criteria.

The second thing—I would like to submit this to the committee.

The second thing that the safety people do is on the road following along with what Senator Long advocated what can people do in a private sector way. We have what we call cooperative safety patrol reports that show if a driver is speeding, if a driver is tailgating, if a driver is doing something illegal, that this is reported to his company so that the owner of the company has an opportunity to discuss this matter with the driver and has the time, the place, the incident and again, it is a part of that self-help Senator Long was talking about earlier.

So as these drivers move across the country—and by the way, Senator, one of the drivers is located in O'Fallon, MO, I think, which is outside of St. Louis, and he has that whole Midwest area to cover. They continuously see what Mr. Sherlock had talked about in his presentation, that as the insurance crisis becomes a very big factor for our industry, that many of the operators are going what we call bare. And that is the new word, and I am sure that all of you in the Commerce Committee and Finance Committee, as you look into this insurance problem, are going to hear more and more of, going bare. That means that the bus operator may just be able to pay for the liability insurance because of that high cost, and as you heard the Chairman of the Commission this morning talk about 600, 700, 1000 percent increases, that means that company is going to have to cut back somewhere.

So what he is doing is he is getting that liability insurance but he is not getting physical damage. That means that if something happens to that bus, it has got to come out of his pocket. And so what we are noticing in the last few months, and the big crunch on the insurance started around July 1 because the two major times for renewals on insurance are on the June 30 and July 1 period and the December 31, January 1 time. So in the months that have ensued since July 1, we are starting to see this problem crop up more and more from our safety men in the field.

As mentioned before, we have only seen the tip of the iceberg, Mr. Chairman, on this insurance problem because just a small part of the bus and truck industry rate increases went into effect in July. The big bulk will come December 31, like in the State of New York, all the renewals are done on a calendar year basis, and there

are many insurance companies who will not write transportation insurance in New York or in New Jersey.

So the insurance problem is just starting, and it is something that I know that you and other Congressmen and other regulators across the United States are looking at, the Governor of New Jersey put a moratorium in effect just recently, and now the insurance industry is going into court on Friday to challenge that moratorium.

So these are the things that are happening across the United States.

But to bring this to a close, I agree with the other members of this panel that there is a lot more to be done in safety, and we are going to work with you all the way with these fellow panel members to get it done, Mr. Chairman.

[The statement follows:]

STATEMENT OF UNITED BUS OWNERS OF AMERICA

Mr. Chairman, my name is Wayne Smith. I am executive director of the United Bus Owners of America (UBOA), a trade association enrolling more than 2,200 bus companies, ranging from the largest, Greyhound Lines, to the smallest, the operators of single-vehicle fleets.

Mr. Chairman, UBOA has asked to appear before you, today, to express our views on the manner and degree to which the Motor Carrier Safety Act of 1984 (The Act) has been implemented.

Mr. Chairman, The Act is one which UBOA advocated for at least a decade prior to its enactment. During administrations earlier than those of Transportation Secretaries Drew Lewis and Elizabeth Hanford Dole, we found only lip service being paid to the concept of an enforceable statute, one which would mandate safety both for components and operators of commercial vehicles. The legislation which emerged from this subcommittee, a document identified, universally and appropriately, as the Danforth Bill, has the potential for creating a very much safer conditions upon the nation's highways.

Before commenting upon specifics of The Act, allow me, Mr. Chairman, to offer some background remarks on the pattern of UBOA's involvement in, and dedication, to The Act's purposes.

During the last six years, UBOA has maintained its own safety patrol. Currently, we have in full-time operation, five fully equipped station wagons, plainly marked and (where permissible) equipped with flashing patrol car lights. In addition, our national safety director operates a sedan which is unmarked, except for its "UBOA" license plates. Each car is manned by a fully trained safety inspector, a person whose professional background is either in safety enforcement or safety administration.

UBOA's Safety Team is unique, is without parallel anywhere on the nation's highways.

Incidentally, Mr. Chairman, one of our criticisms of the Interstate Commerce Commission (ICC) has been that its fitness determinations for first time motor carrier applicants has been a simple (unverified) "verification" that the applicant has access to and is familiar with Department of Transportation (DOT) safety requirements, and that the applicant will comply with those regulations. UBOA makes compliance more attainable by distributing to member companies, copies of DOT's safety standards. In that venture, we have had cooperation from J.J. Keller and Associates, a leading publisher of all types of regulations and compliance documents which might be needed by a motor carrier in meeting national and State requirements.

When visiting member companies, UBOA's safety inspectors check for vehicle safety and roadability. We also verify record-keeping, driver log preparations, and all types of documentation which need to be maintained by carriers seeking to comply with DOT or ICC requirements.

As part of our safety surveillance process, UBOA sponsors a "Cooperative Road Patrol." When performance monitors of cooperating companies observe UBOA's decal on a vehicle, they observe and report upon driver performance, vehicle condition, etc. Just so, UBOA submits road observations on vehicles of cooperating carriers, and—whether or not a vehicle belongs to a member—we report to the owner

when irregularities are observed. UBOA attempts, also, to identify and to report upon illegitimate carriers. As an example, the chairman of our Safety Committee observed an unmarked bus, in an uncertain state of safety compliance, operating at high speed on the Baltimore Beltway. We established that the license tags had expired, and we reported the facts to the District of Columbia, alerting the Police Department to the violation.

The "First Team" is another safety undertaking sponsored by UBOA. At a six-figure cost, UBOA has distributed among our member companies, materials designed to make everyone safety conscious. Aside from visuals, such as caps, posters and medallions, we have distributed instructive literature along with pre- and post-trip inspection checklists for use by drivers.

The most ambitious aspect of our First Team program is our video tape series. So far, two tapes have been prepared; these have been offered at cost to our members. The initial tape is on driver training; the second, on vehicle maintenance.

Another safety enterprise is our participation as an associate member of the Commercial Vehicle Safety Alliance (CVSA), the organization which promises to be the definitive instrument for giving shape and purpose to the inspection program mandated by The Act. Two UBOA safety inspectors served on the CVSA committee which formulated and promulgated the standards to be followed in roadside and periodic inspections of motor coaches.

The influence of CVSA is perceptible in the procedures being followed in perfecting the Motor Carrier Safety Assistance Program (MCSAP). CVSA and MCSAP combine to give the Bureau of Motor Carrier Safety (BMCS) at the Federal Highway Administration (FHWA) an enforcement arm which could never have been flexed, were the Federal entity to have been the only presence on the motor carrier inspection scene.

Mr. Chairman, UBOA perceives the need of legislative action on one front: We join with the American Trucking Associations (ATA) in seeking establishment by law of a Motor Carrier Administration (S. 1710). We endorse action of DOT in naming a Motor Vehicle Administrator at FHWA. Furthermore, we applaud the selection of Richard P. Landis to carry out the mission of that office. We believe that Mr. Landis should have his assignment spelled out in statutory language; that the position should not be made contingent upon the disposition of an FHWA administrator or a DOT secretary.

One of the strong premises of our joint effort with ATA in support of S. 1710, is its enabling process for combining at DOT the safety fitness determinative functions of ICC, thereby making it possible for the nation's oldest independent agency to bring its tenure to an honorable end. With safety and insurance responsibilities vested in the Motor Carrier Administration, there would be only residual activities to be distributed from ICC to entities such as the Federal Trade Commission.

Mr. Chairman, UBOA emphasizes its general support for The Act. We single out for pre-eminent attention the requirements of Section 311 that State regulation be "nationally uniform." Obviously, there must be uniformity of State regulation if there are to be standardized inspections with suitable enforcement.

I have the honor, currently, to be a member of FHWA's National Motor Carrier Advisory Committee. In all the meetings in which I have participated, safety has been the prime consideration, in fact the major consideration. One of our activities, for example, has been observation of the roadside inspection process as mounted by the California Highway Patrol.

Another activity in which UBOA has joined forces with ATA, is one in which we are working, jointly, with the insurance industry to standardize driver licensing and insure accurate identification of problem drivers. The enterprise is called Alliance for Motor Vehicle Administration Telecommunication (AMVAT). We are highly supportive of FHWA's program for a computerized National Driver Register (NDR). However, we have two serious problems with NDR. We believe it does not go far enough; and that it will be too long in the proces of development. We are told it will be 1997 before anything can be expected to materialize. By contrast, AMVAT intends to have its feasibility study underway very soon, and expects in a matter of months to offer a request for proposals on how centralized driver information may be assembled and put to use in the interest of safety.

In brief, Mr. Chairman, UBOA is excited over the series of events The Act has set in motion. We fully expect that implementation of The Act is about to show very wholesome results; that even greater benefits will emerge as enforcement processes are perfected.

Mr. Chairman, UBOA appreciates the opportunity to appear before you, today, and to express our support for the Motor Carrier Safety Act; to give a declaration of our intent to do all in our power to help put enforcement muscle on the legislative

frame The Act has provided. It will be happy to attempt to respond to any questions the Committee may have.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question 1. You state in your testimony your support for the Motor Carrier Safety Assistance Program. Do you believe this program should be funded fully at the levels authorized by this Committee in 1982?

Answer. UBOA believes to be minimal, the amounts authorized for the Motor Carrier Safety Assistance Program (MCSAP) for the periods beginning with Fiscal 1984. We supported introductory levels because of the growth aspects of the plan. Based on each year's appropriation, it must be assumed that the planning and training phases were seen not to require the amounts needed to sustain an operational program. Even now, the program is not fully operational; it is uncertain what higher levels of operational perfection might have been achieved, had the full amounts been appropriated as authorized for each of the intervening years. UBOA has been a close observer of the evolving program. We are associate members of the Commercial Vehicle Safety Alliance (CVSA) which, is a very significant presence, second only to Bureau of Motor Carrier Safety (BMCS), at the Federal Highway Administration (FHWA). CVSA has done a phenomenal job to bring MCSAP to a level of effective operations. The achievement is all the more impressive when it is reflected that the amount appropriated for Fiscal 1986 was only $17, instead of the fully authorized level of $30 million.

UBOA supports, enthusiastically, the request of Transportation Secretary Elizabeth Hanford Dole, that for Fiscal 1987, the specified amount be increased from $40 million to an authorization of $50 million, and that the full amount be authorized. Were that to be done, aggregate funding would still be $29 million below the amount authorized for the period from Fiscal 1984 through 1987.

Question 2. You noted your suport for creation of a Motor Carrier Administration at the Department of Transportation. Would you expect any real safety benefits to come from such a reorganization or would it be really more of just a box-moving exercise?

Answer. The safety results would be genuine, rather than merely superficial. Centralized administration along functional lines will bring its rewards, principally, in improved efficiency. But tranfer of ICC's residual safety enforcement functions to the combined body, would represent the most significant advance in safety administration since the Department of Transportation first was assigned responsibility for administering motor carrier safety, partly with newly originated duties, and partly with the initial transfer of jurisdiction away from ICC.

Question 3. As you noted in your testimony, the intercity bus industry is in the midst of a serious insurance problem. In your view, has economic deregulation of the bus industry played any role in this insurance crisis?

Answer. The answer is "No." Economic deregulation has had no causative influence on the insurance crisis.

The CHAIRMAN. Gentlemen, thank you very much.

A Motor Carrier Administration at DOT sounds to me like shifting boxes on an organizational chart.

Is that a great idea?

Mr. SMITH. Go ahead, Tom.

Mr. DONOHUE. Mr. Chairman, I think you could make a very good argument that is sort of exactly what we are doing, but I would rather couch it another way: Equity. If Elizabeth Dole decides to have a meeting today with the modal administrators to decide on matters dealing with safety, or to position herself to deal with taxation as it comes before this committee, the Finance Committee and others, or regulation, trucking is not represented. Just look at the double-bottom study (i.e, Longer Combination Vehicle Study) that was done by the Highway Administration. The conclusion was very simple: We ought not do it, it is bad for railroads. I think it is very clear, even if only from a perception point of view,

that the industry that carries more freight, hires more people and pays more taxes ought to be represented at the modal administrator level.

Now, if the arguments offered by Mrs. Dole, Mr. Burnly and others at the DOT that what this type of administration would do is cause more regulation, cause more lawsuits, get more people involved in our business, then there is another way. Let's get rid of the other modal administrators and organize DOT on a functional line. But you cannot have it both ways.

And I think from our perspective, the recognition of the need for some representation can be seen in the appointment of Mr. Landis and others, and we just want it on the same floor.

Mr. SHERLOCK. Mr. Chairman, if I may, we would agree with Tom. We think that the mode that carries the most passengers in this country, more than AMTRAK and the airlines combined ought to be represented in a specific way in the Department of Transportation. It is really a matter of focus and a matter of resources. The Bureau of Motor Carrier Safety comes within the Federal Highway Administration, and the orientation is different. The Federal Highway Administration fundamentally is concerned about pouring concrete and about design of highways for safety, but there needs to be a specific focus on enforcement, and that is within the Bureau of Motor Carrier Safety. That identity needs to be strengthened so that more people and more money go into that function.

Mr. DONOHUE. Mr. Chairman, if I might just elaborate on one sentence, we believe this can be done without spending another dime of the money put out by the Federal Government. It is just a matter of organizing our resources in a responsible way and appointing a few senior leaders that would take responsibility for these functions.

I would also like to say another matter about everything now being in the Highway Administration. Not only do they pour concrete, but they are responsible for taxing. They are working very closely with the ASHTO people to tax to get the money for that concrete, and between the buses and the trucks, we pay well over 40 percent of that, and we just do not like the taxes in the same place as we have those people that are representing our industry.

The CHAIRMAN. Let me ask you about the drug situation and drug testing.

To what extent do you think the use of drugs is a part of the truck safety problem? To what extent is testing now done, and should this be a focus for buses and trucks?

Mr. SCHWEITZER. There is a rulemaking within the Bureau of Motor Carrier Safety, I think the comment period is over on October 31, that would change the standard for disqualifying a driver to the basis of drug use rather than not impairment or addiction to drugs. We are planning to file comments very much in support of that change, and are also going to suggest that the Bureau of Motor Carrier Safety establish a rule that is very similar to what has been established in the Federal Railroad Administration. That is, it would authorize employers to do a preemployment drug screening either through blood or urine tests, that would allow them to do blood, breath or urine tests as part of the requalification physical exam every 2 years, and would also, and I think this

is most important, give them the authority to do a breath or urine test for cause at any time under any employment of that individual. That would allow them to test this individual for drug use, not addiction but use at any time while he is on duty.

Mr. SHERLOCK. Mr. Chairman, Bob Forman has come a long way. Perhaps he would have a say on this matter, since he has been very much involved in driver selection, preparation and training as well as in the testing.

Mr. FORMAN. With regard to drug screening, the intercity bus industry has not seen any demonstrated evidence that we have a significant problem. The two largest bus companies in America have been engaged in either entry level drug screening or during the course of employment drug screening and do not find a lot of positives. It is a rare case, as a matter of fact, where positives are found.

I think a lot of this goes to the demographics of our population versus the drug use population. We have very low turnover in our industry. Generally speaking, we have long term employees. The average age of our typical employee is around 45, 47 years of age, been with us for some 15 to 20 years, and as a result, we see more stability.

However, at the entry door we do find approximately a 20-percent rejection rate for positive drug screen. So people who come to us for jobs, we are seeing the problem. In the course of employment we have not seen the problem as yet.

Mr. SMITH. Senator, I think what Bob was saying is when you deal with Greyhound or Trailways, you are dealing with a company that has a union. When you are dealing with R.V. Durham and his teamster members who work for Tom's industry group and the private truck council, those are pretty well organized areas where you are going to have some kind of control, either on drug testing or whatever the case may be. But in the bus industry alone, you have had almost 1,500 new companies that came in in the last 2½ years, and most of these, are nonunion. And how do you go out and try to put a program into effect on people who are driving a bus that has 38 to 48 people? The same way in the trucking industry, I think I mentioned, with 17,000 new entrants mostly nonunion carriers.

The CHAIRMAN. How do you deal with that?

Mr. SMITH. That is the big question. How do you go out and put something into effect when people are all over the United States and they are not in a union?

The CHAIRMAN. What is your answer?

Mr. SMITH. I think again we are going to have to work with our safety people to do, some more inspections on that problem alone.

Mr. DONOHUE. Mr. Chairman, in answering your first question, there is a drug problem in the trucking industry because there is a drug problem in society. We have just been through the World Series and we see this morning Commissioner Ueberroth reporting a tremendous reduction in drug use in the minor leagues because of testing and that he wants to do it in the major leagues. We do not have a major league situation, but we certainly have companies that do not have regular control of their employees.

We need to work with the truck stop people to clean up its act, to stop selling liquor in some places. In our roadside inspections

where we are asking for more money from the Federal Government to help the States, we need to start taking a look at who is driving the trucks. If they look like they are impaired, we ought to test them. Finally people ought to know we are going to test them, and if we find them driving on drugs, we ought to fire them and we ought to prosecute them.

We are talking about assault with a deadly weapon. If a man gets behind the wheel of an 18-wheeler and it impairs his ability to function because he is under the influence of alcohol or drugs, then we will cooperate to the extent that our members will start to scream on this issue.

Mr. FORMAN. Let me add, if I may, Senator, a mechanism is in place to do all this right today. The Bureau of Motor Carrier Safety has more than adequate regulations out covering all drugs including alcohol. The only step that is missing at this point is that you require the carrier or the employer or if he is self-employed, some evidence that they have taken the drug screen at the time they are hired, and that they take it on their biannual physical as a requirement of the regulations to take. Everything else is in place. The only thing that is not in place is that we as an employer or the self-employed individual has to have evidence that the drug screen has taken place.

Administratively, the DOT could do that on their own initiative without anything from Congress.

Mr. DONOHUE. May I respectfully say that any college student will tell you how to beat that rap. The thing is that if you test for alcohol or for most drugs, you refrain from using those drugs for 16 days and you are clean. I think it is important to work together with DOT, with this committee and with the industry leaders to figure out a way to find people on irregular, unscheduled basis. We are talking about a serious issue. Safety is the only thing that is going to lead to any credibility for this industry in terms of its other problems with productivity, bigger vehicles, taxes and other questions. We can let the lawyers go out and figure out all the reasons that we ought not do it, but let's do it.

The CHAIRMAN. Senator Long?

Senator LONG. Thank you very much for your testimony.

I just want to raise a question and see if you have thought about it. With regard to the insurance problem, especially where you have some type of an accident where it is one of your insured in an accident with another of the insured, one company or the other you would think would have to pay, and many of these companies actually are reinsured, so sometimes they are secondarily liable for an accident even though they do not hold that policy directly.

Now, the thought occurs to me that we could make our money go further and render a better service if we could work toward arbitration on a compulsory basis between those who are insured when both people are insured. Now, of course, I know when I say that, I will lose some friends in the legal profession. I will be regarded as a renegade by that group.

But think of all the time you could save in the selection of juries and all the court costs involved in the adversary procedure, and furthermore, I say this as a fellow who once practiced law, you could certainly have more uniformity in what someone could

expect when he presents his case if you are arbitrating than you can where you have to select a jury and cannot be really sure how it will go. A lot of it depends on whom you get on a jury, and there is no assurance that you are going to have any substantial credentials or qualifications among the jurors.

I just wondered to what extent you people have thought about arbitration and what suggestions you might make on this subject as insured carriers.

Mr. SHERLOCK. Well, you have certainly put your finger on the problem, Senator. It is the liability exposure that the insurance companies feel due to the jury process in the United States that is causing this problem. This is certainly not just the bus industry that is experiencing it. In fact, we are bearing an undue portion of the burden for insurance companies, as we see it. In fact, in a survey we took, it showed that of 133 carriers, on the average that were paying $6,032 per bus for the premium, which is very low, and their losses in the previous year had been $2,283 per bus. So there is a big disparity here.

Senator LONG. Would you mind giving me those two figures so I can write them down?

Mr. SHERLOCK. Yes. The average premiums for those 133 companies per bus was $6,032. Our losses per bus in that same survey were $2,283. So we are not being looked at by the insurance industry for what our performance is, we are being penalized for the general functioning of the judicial system.

If arbitration were a way and means to lessen the impact of that, we would find that useful. I have also suggested that it is time for the Congress to consider limiting the liability of bus transportation companies in some specific way.

Senator LONG. Well, it seems to me that we should get away from the adversarial system and get to where you have someone who is looking at it with the right credentials, who is thoroughly familiar with it—the arbitrator could be someone who has practiced law in the area for years, for example, and knows very thoroughly what all the facts are. I just doubt that society can keep paying these enormous premiums we are paying so as to have so many lawyers out there arguing over the proceeds.

As you know, we have, with 6 percent of the world's population, more lawyers than all the rest of the world put together, and I believe we do more litigating than all the rest of the world put together.

Now, where you can't do any better, that's fine, but it seems to me that in a great number of cases we can do better, and we ought to find a way to just use our wits more effectively.

I noticed that the area of malpractice, where we do not have an answer, is costing us a fortune. In this area, we could require that if he wants to be protected against malpractice, the patient would have to insure himself against malpractice. If we had to do it that way, then I would not be as much interested in insuring myself against malpractice as for the success of that operation because in the last analysis, if I had to have a very serious operation, major surgery, the important thing to me would be whether I am going to survive it and whether I would be useful thereafter. Someone would say, well, the costs would be very, very great, if you were to

try to insure for the success of the operation, but in the last analysis, that is what the patient is interested in, and if you could decide how much he wants to take on that basis, at least he knows he is going to collect something if the operation is not a success.

Mr. SMITH. Senator, I have got an answer for that.

Senator LONG. Do you?

Mr. SMITH. Last week the president of Alexander & Alexander, a large insurance brokerage firm, spoke at an industry group about just what you are talking about, when are we going to get some tort reform, when are we going to sit down and do something about this? And he said that the insurance industry is shooting themselves in the foot because nobody wants to take the leadership either in the insurance industry or with trial lawyers or any other field, and I think that, Senator, in your days of retirement that are coming up shortly, you may become that leader to take on that responsibility. Somebody is looking for that leadership, and if you are interested, Senator, they need somebody with your background to do it.

The CHAIRMAN. If I could just interject at this point, why does he have to wait?

The time is now.

Senator LONG. Well, I had not thought much about the whole subject until recently, but it seems to me as though something must be done because the cost is overwhelming, the cost is enormous, and I do not want to be regarded as a renegade to the legal profession, but to tell you the merciful truth about this matter, it is ridiculous that our society is paying such an enormous amount of money and getting so little for it in this area.

If you took all the money we are spending on the courts and all the money we are spending on the lawyers and simply put that to provide the service for society, I really think we could almost ensure the success of the operation more easily than we can pay the cost of the system we have today the way we are handling malpractice. There ought to be some way that we can reduce all these enormous litigating costs so that the net cost would be what it actually costs to pay for the damage rather than such an enormous amount all going in the cost of selecting the juries and all the rest.

Did you want to say something, Mr. Donohue?

Mr. DONOHUE. Thank you, Senator.

The history of the Congess of the United States is that it addresses problems when they become serious enough, and I suspect that your analysis is a lot more current and will become more current to this body very shortly. As Mr. Smith indicated, in January of this year there is not only going to be very, very serious increases in costs for everybody's insurance, but it will not be available to move hazardous materials, for example. Also, in January of this year the medical malpractice insurance costs for those folks in the medical profession are going to go up a significant amount, and we are going to have the same kind of thing we had in New York where people just are not going to practice.

And then finally, what is happening, I think we will see in our own homes in the coming 2 or 3 years massive increases in our automobile insurance and other insurance costs. At that point there is going to be a demand from industry and from the society

to ask the Congress to do something about the whole question of liability reform.

And Senator Kasten is leading a series of discussions on that and trying to get a bill. We are going to have to do something about it because if we do not, we are going to spend more money on the insurance and on the liability protection than we are going to spend on the development, the manufacturing, and the delivery of the product. We cannot afford it.

Senator LONG. Well, let me just put the problem as I see it as a taxpaying citizen rather than a U.S. Senator. I am never going to sue somebody for malpractice. Just to give you one example of a parallel problem, I am never going to sue. I have had the opportunity. I can think of at least one situation where in my family I think we would have had an open and-shut case for a large amount of money for malpractice if we had wanted to go to court and sue, and we elected not to do so.

Now, at the same time, even though I will never sue somebody for malpractice, I am paying the cost of malpractice because every time I go to a doctor he is having to charge a fee that pays the premium for malpractice. So I am paying for the malpractice even though I am not getting any benefit out of it, and I think that probably speaks for about half of America. Every time we go to a doctor we have to pay the cost of malpractice even though many of us will never sue a doctor. And one way or the other we need to apply the same principle to some of this insurance that you are required to have so that we get the cost of it down.

Now, if you are thinking in terms of the average that someone is able to achieve for a given injury, and if a person gets about what the average amount would be, and if the decisions are relatively uniform so you can pretty well predict what the outcome is going to be, in the name of common sense, that is better than having all this doubt as to whether a person is going to get any recovery at all, and then this enormous discrepancy between the high figure and the low figure.

I can recall the case of a dear friend. He was of a racial minority group. He went to law school with me, and he quit practicing law because after he had made a beautiful presentation of his case, that jury came back with a finding that there was no liability. The judge and everyone elese felt bad about it and this fellow just quit practicing. Now, in his case he was satisfied that the reason that adverse decision came down was purely a racial matter. They were prejudiced, that jury was prejudiced against people of his minority group.

As unfortunate as it was for that individual, think how unfortunate it is for the victim who should have had the recovery. And that type thing would not happen in an arbitration situation with a qualified arbitrator.

So I am not saying that that is typical at all, but those kinds of things can happen where we proceed the way we are doing it now. I think it would be a lot better if you had a situation where, if there is liability, there will be a fair payment and there will be more uniformity than we achieve right now.

Mr. SMITH. Well, Senator, I think the other thing is that Mr. Sherlock, when he did his survey of 100-plus companies, showed

what the loss ratio was to the premium dollars paid. Just to back that up, we insure 1,700 bus companies over $60 million worth of premium in the year of June 30, 1984, to July 1, 1985. Of that $60 million, our loss ratio was 48 percent. That means that the insurance industry made 52 percent profit on $60 million.

Now, tomorrow all of us will be testifying before the House Committee on Public Works on just insurance, and the insurance industry is going to be there tomorrow to testify as well as industry representatives, and they are going to get up there and say maybe that the bus industry is a safe industry, but they are in the same book of business as lawyers, doctors, day care centers, truckers, airlines and whatever the case may be, and so the industry will hide behind what they call in the terminology of the industry the book of business, and it is most difficult to tell your bus operator who is out there trying to achieve a safe record, and you can tell by those amounts that I just gave you that he does have a safe record, that he cannot get insurance.

It is a difficult job, Senator, and I know that in your State alone we get calls almost daily. One of the largest carriers in New Orleans, Hotar, is paying something like almost 800 percent increases on their premiums over the last year, Senator, 800 percent. You are talking about companies that were maybe paying $100,000 plus who are now up at $600,000, $700,000 in 1 year's time.

And you have got to remember, where do you get that cash? You have to go to the bank. We advocated through an organization called the Small Business Legislative Council, Senator, 86 associations that asked the President to name a task force because the crisis is so great because there are certain things that the Congress can do. There are things that you can do right now by setting minimums. But the rates are set by the States, and the State insurance commissioners in 50 States are like 50 countries. They all have different rules and regulations.

So we have gone through this battle on preemption before in other matters before this committee, and we are going to have to do the same thing. But it is a crisis, Senator, and we are trying to alert the people that they just have seen the tip of the iceberg. Wait until December 31. You will get not only calls, you will get letters, you will get visits.

Michigan last week, talk about malpractice, Lansing, MI, 9,000 doctors in white robes went to the legislature and said they would not practice until they got a rate on malpractice insurance. The legislature stopped all proceedings, and they are still working on a malpractice program for the State of Michigan, 4 days that they have been going through continuous hearings to come up with a program so those doctors will give delivery of care.

Senator LONG. Thank you very much.

The CHAIRMAN. Gentlemen, thank you.

I just want to say this before you go. This committee in past years has gone through a period where a lot of our focus was on one subject, and that was deregulation, whether it was trucks or railroads or telephones or whatever. I think that one of the most worthy things that this committee could do is to focus on the problem of the cost of insurance.

Now, Senator Kasten and others, particularly Senator Kasten, have been very interested in the issue of product liability. We have been around that bush so many times, and we are still at it. We are working hard. Senator Kasten and David Zorinsky of the staff are working very hard on the product liability question, just trying to pull some people together—not the trial lawyers, forget them, forget them. But at least the consumer groups and the manufacturers should have a common interest. They really should have a common interest, the consumers in getting the matter determined in their lifetime, you know, not 20 years later, but in a few months, hopefully, a year maybe, to get compensated for the real harm that has been done to them, and the manufacturers having some degree of certainty. It is totally ridiculous to produce something and 25 years later find out that you are liable for some use that you have never thought of before. It is totally outrageous.

Now, that is product liability. That is tough. I mean, those are tough negotiations that are going on. Then we hear from the doctors. All I wanted to do was go to the ball game and a doctor grabbed me and told me about the problem of insurance. He is an obstetrician, he says. He pays about $100,000 a year for liability insurance.

Now we have the truckers coming in to talk about the problem of insurance, and it is not just something that slipped into this testimony. I know any time I see any of you, that is what you want to talk about, insurance. And you are right.

I am glad Senator Long has focused on it so clearly. It is very, very tough because the trial lawyers will fight us to the last ditch, but my gosh, the world exists for something other than the trial lawyers. They are supposed to be the servants of the people, not the sand in the machinery of life.

So I really would hope that any thoughts that you or anybody else has on the subject, you know, we are open for business around here.

Thank you very much.

Senator LONG. If I might just say one final word here, I love trial lawyers, I was one of them. And I have no doubt I can get along with them as long as I am advocating something that is parallel to their economic interest. But unfortunately, this situation has developed where we see first one situation, and I regret to say, then another, where trial lawyers find themselves setting their interests even above the interests of their clients. What interest does a client have in a lot of unnecessary litigation and a lot of unnecessary uncertainty about the outcome of the situation? The client has no interest in seeing a case drag out for years. The client has no interest in seeing a case drag through the courts for years. What that client wants is what is fair and what other people have a right to expect under the same set of circumstances.

Of course, there are situations where these lawyers are very much needed, and generally speaking, the purpose of the lawyers, as Senator Danforth so well indicated, is to serve society, not to disserve society.

I think that there are many members that know that, but I do not have any doubt that you will probably find a majority of trial lawyers opposed to what I am talking about, but that does not

mean everybody is opposed to it. There are a great number of lawyers out there who would agree with what you are saying here.

Thank you very much.

The CHAIRMAN. Thank you, gentlemen.

Next we have Earl Eisenhart, director of legal services, American Association of Motor Vehicle Administrators; Charles D. Gray, assistant general counsel, National Association of Regulatory Utility Commissioners.

Mr. Eisenhart?

STATEMENT OF EARL EISENHART, DIRECTOR OF LEGAL SERVICES, AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS; AND CHARLES D. GRAY, ASSISTANT GENERAL COUNSEL, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. EISENHART. Thank you, Mr. Chairman, Senator Long. It is indeed a great pleasure for me to be here this morning on behalf of our executive director, Don Bardell, and the members of the American Association of Motor Vehicle Administrators.

Our association represents the motor vehicle administrators and chief law enforcement officials of the individual States, provinces, and territories of the United States and Canada. As such, our members have direct operational responsibility for the licensing of drivers, titling and registration of highway vehicles, including motor carriers. Our public safety officials, of course, have the task of enforcing motor carrier safety laws.

Obviously the AAMVA and its members have a special interest in the Motor Carrier Safety Act of 1984 and what it means for the future of safety on our highways.

I think as you are aware, Mr. Chairman, our association had some concerns with early versions of the safety legislation last year, which we felt would have provided the States with little involvement in the process of developing a national uniform regulatory system. We were fairly well satisfied, however, that the act as passed was a very significant step toward a strengthened Federal motor carrier safety program while striking a balance of Federal, State, industry, and employee interests. Certainly our association thoroughly supported and continues to support the central purpose of the act, to promote the safe operation of commercial motor carriers.

Early this year the Bureau of Motor Carrier Safety [BMCS] issued advance notices of proposed rulemaking pursuant to the act. One of these was notice of guidelines for submissions of State safety regulations for review as required under section 207(c).

As these notices were issued, we took immediate steps to apprise our membership. We worked with the bureau to clarify to the States what material was being requested and when. We are happy to report at this time that all States have responded to this request for submissions.

While supportive indeed of the intent of the act, the AAMVA believes that the Federal Government acting alone cannot effectively deal with the problems of truck safety. Success depends, in our

view, on the active involvement of the States and the private sector.

Be assured that the AAMVA is most sensitive to the concerns and frustrations of the trucking industry, many of which we have heard described today, the insurance industry, the frustrations of the public as well, which led to enactment of the Motor Carrier Safety Act. We cannot be content to sit by, however, and wait for the results of the current rulemaking process. The problems of motor carrier safety, particularly as they pertain to the driver, must be addressed today, and we are addressing them.

For example, there is evidence we have heard this morning that a large number of commercial drivers apply for licenses in more than one jurisdiction and spread their convictions over two or more licenses. Widespread recognition of this problem has been a motivating force in the development of a concept which we have been exploring for a number of months in consultation with the insurance and interstate trucking industries. Mr. Schweitzer mentioned this concept.

It is the establishment of a nationwide telecommunications system which will allow for the electronic transfer of motor vehicle related information among jurisdictions. While we envision that this system will ultimately encompass the entire spectrum of motor vehicle administrations, one of our initial objectives will be the full implementation of what we call the one license-one record concept. Very simply, this is the idea that no driver should have more than one license or more than one record.

As such, we see this system facilitating the currently existing Driver License Compact, the key element of which is the one license-one record concept. The AAMVA serves as the secretariat for this interstate compact. It currently has 31 members, and we are working also in cooperation now with the National Highway Traffic Safety Administration to promote the compact among other jurisdictions.

We have also recently made a proposal, together with the Highway Users Federation, to the Department of Transportation for funding of a high visibility workshop this winter to promote the compact as well as to promote another key element in effective control of commercial driver, the Uniform Classified Driver License System which has been developed by our association.

Very fundamental to success in this area, however, a number of matters need to be addressed. First, we need a universally recognized definition of commercial driver. Second, we need to have a secure system for uniquely identifying commercial drivers so that we know a driver is who he says he is when he comes to the counter to apply for a license. We are encouraged in this area by some new technologies which allow for quick and nonintrusive identification such as the procedure which is fairly new for photographing an individual's retina and having it digitized, and then it can be sent over telephone lines. Third, we need a uniform classified license system as referred to above.

Tying all this together, in our view, is the development of the telecommunications network. The next step in that process is performance of a cost-benefit feasibility study. Already, an unincorporated association, the Alliance for Motor Vehicle Administrators'

Telecommunications, or AMVAT, made up of representatives of the insurance, interstate motor carrier industry and others, has been set up to raise funds for this study.

Obviously questions of privacy and the spectre of Big Brother are going to be raised. We need to confront this head on. Drivers need to be assured that their rights will be protected.

Mr. Chairman, we are not asking for Federal funding assistance for this project at this time. However, we urge you and your colleagues to give careful consideration to the potential need for Federal assistance to support these efforts in the future.

May I proceed, Senator?

The CHAIRMAN. Surely.

Mr. EISENHART. We would also like to comment briefly on matters relative to the safety of the vehicle itself.

Section 210 of the act requires the Secretary to establish Federal standards for the annual or more frequent inspection of all commercial motor vehicles engaged in interstate or foreign commerce. Section 210(b) exempts State programs which the Secretary finds to be as effective as an annual or more frequent inspection system. The Commercial Vehicle Safety Alliance Programs which were described earlier appear to be specifically exempted under certain conditions.

Mr. Chairman, there is a continuing debate over the relative efficacy of periodic inspections and roadside inspections such as those conducted under the CVSA. The AAMVA supports both types of inspection methods provided that there is quality control and adequate enforcement. In the best of worlds, a combination of periodic and roadside inspections in each State would be desirable. We question, however, whether adequate resources are available to accomplish this.

The question has also been raised as to the adequacy of periodic fleet self-inspection. We believe this method of inspection to be adequate provided there are sufficient controls with respect to certification of fleet inspection programs including side audits, review of personnel training and supervision, maintenance of proper records, and fraud investigations.

The AAMVA urges your continuing support for the Motor Carrier Safety Assistance Program, MCSAF, to encourage States to adopt and enforce the Federal Motor Carriers Safety Regulations or similar State rules that are compatible with these regulations. We believe the MCSAF to be an example of a cooperative State-Federal relationship that holds real promise of improving motor carrier safety. Additionally, we are optimistic that the success of MCSAF will minimize the need for Federal preemption of State safety regulations available to the Secretary under section 208.

However, for this to work there is a continuing need for full assistance to support manpower, equipment and training needs. Even if a State were to only have fleet self-inspections, there remains a need for funding to support the necessary State controls noted above.

In conclusion, our association urges this committee and Congress to work cooperatively with the States and the private sector to build on the work which has been started. Success depends on all of us working together. Let's keep the lines of communication open.

Thank you, Senator.

The CHAIRMAN. Thank you, sir.

Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

I am here this morning on behalf of the National Association of Regulatory Utility Commissioners. Our members are primarily the State regulators. We are pleased to be here to present our views on these important issues.

I sense from talking to our members that the safety issues confronting the motor carrier industry are becoming of increasing concern to all State officials, regulatory, safety, enforcement, and for that reason, we are pleased to see the act passed. We had some problems with it primarily for issues of preemption, but at this time we have no serious complaints with the administration, but we do have some concerns.

Those concerns which I will get to in a minute should not overlook the fact that we strongly support the State-Federal partnership for effective safety enforcement. It is working in other areas, such as natural gas. We think the record is improving in the rail area, and we think that the State-Federal program could be a very effective mechanism in this area as well.

As have the other witnesses, we favor complete and full funding for the State grants under the program to enable them to do the job that they have been asked to do by the Congress. We are also very appreciative of having two members appointed to the safety regulatory review panel over at DOT. We think it is vital that there are people with the State perspective on that panel in order to address the issue which I think that we do have some concerns about, and that has to do with preemption of so-called nonuniform or nonconforming State safety practices and plans.

At this point it is too early really to tell whether there will be problems. We foresee no problems and hope that there will not be, but we hope that the Secretary and the Department is sensitive to the needs for the States to impose safety requirements which respond to local conditions which may be perhaps nonuniform in some broad sense but which are vital to the local needs of the States and the regulators.

At this point we are just monitoring closely to see that that does not occur, and we hope to help our members to ensure that their safety needs are effectively represented.

That summarizes my statement. I will not take any more time.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Distinguished Members of the Committee.

INTRODUCTION

My name is Charles D. Gray and I am the Assistant General Counsel of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today is Phyllis B. Levine, NARUC Assistant Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest

by seeking to improve the quality and effectiveness of government regulation in America.

Commercial motor vehicle safety is of vital concern to our member State commissions and we appreciate your invitation to address the Committee concerning Oversight of the Motor Carrier Safety Act of 1984. While this is the first oversight hearing on this Act and it is generally too early to comment on the success or failure of the Program, we believe implementation of the Act is running fairly smoothly.

The NARUC has consistently endorsed legislative initiatives designed to improve the safety record of our nation's motor carriers and is just as anxious as this Committee to learn the outcome of this legislation. The Association's interest in the Motor Carrier Safety Act is two-fold: first, to ensure the continuance of an effective Federal-State cooperative effort in administering motor carrier safety regulations; and second, to ensure that traditional State jurisdiction over intrastate safety regulation is preserved.

I. Federal/State Partnership to Enforce Safe and Responsible Service.—Commercial motor vehicle safety is of particular concern to State regulators because of the larger carriers operating on our highways due to the new size and weight standards mandated by the Surface Transportation Act of 1982. 49 U.S.C. Sec. 2302. In addition, the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982 significantly eased the entry requirements into these industries increasing the need for improved safety regulations.

The NARUC is pleased to see that 49 U.S.C. Sec. 2508, establishing a Commercial Motor Vehicle Safety Regulatory Review Panel, is being implemented. With the diverse membership of the Panel, including John M. Allen of the Arkansas Transportation Commission and Paul Henry, Director of the Motor Carrier Investigation Division of the Oregon Public Utility Commissioner's office, who were nominated by the NARUC, we are assured that the interests of the States will be considered. We understand that most of the States have submitted their laws and regulations to the Safety Panel and are awaiting rulemaking decisions.

In other areas of Federal/State cooperation, the NARUC has wholeheartedly endorsed the type of State grants-in-aid program included in section 402 of the Surface Transportation Act. The Association is pleased that the Motor Carrier Safety Act directs the Secretary of Transportation to take such actions as are necessary to carry out that program. 49 U.S.C. Sec. 2510 (b).

As the Motor Carrier Safety Act states in 49 U.S.C. Sec. 2502(4), "interested State government can provide valuable assistance to the Federal Government in assuring that commercial motor vehicle operations are conducted safely and healthfully." We agree with the intent of this legislation that a motor carrier safety program of national proportions must involve the States as true partners in investigating and enforcing carrier safety requirements. Under the program mandated by the Surface Transportation Act, Federal matching funds of up to 80 percent of the States' total program costs are to be provided to States which have submitted a plan of enforcement to the Department of Transportation (DOT) to implement the Federally-mandated safety standards.

Utilizing State resources and personnel in carrying out a grants-in-aid program ensures that Federal safety standards are monitored and enforced in a skilled manner at only a portion of the total cost. During this era of fiscal restraint, such an arrangement is practical and efficient. More important, these programs enable Federal and State governments to work together to protect lives and to prevent property damage.

With possible further deregulation of the motor carrier industry, it is important to go beyond the Motor Carrier Act of 1984 and ensure that interstate motor carriers operate in a safe and financially responsible manner. Therefore, the NARUC has proposed that in the event economic deregulation occurs, Congress should enact legislation which requires each motor carrier operating in interstate commerce to obtain a "Federal Fitness Certificate" from the DOT before the carrier's trucks are put on the road. This proposal is a simple procedure whereby all interstate carriers would provide assurances that they have legally required insurance coverage, agents for the service of legal process in each State in which they intend to operate, and an understanding of Federal safety laws as evidenced by a sworn affidavit acknowledging a carrier's intention to conduct its operations in compliance with all applicable Federal and State safety laws and regulations.

This proposal is not intended as a barrier to entry, but rather, as a means to enlist the States in the important effort of enforcing safe and financially responsible operations. We believe this proposal is attractive to both State and Federal governmental agencies for at least three reasons.

First, from the Federal perspective, this proposal would enable the DOT to improve motor carrier safety enforcement activities without the expenditure of scarce Federal funds. The registration fees collected by the States would provide an important source of funding for State safety enforcement activities. In this way, the States would be able to put more officers on the road to enforce both State and Federal safety laws at minimal cost to either State or Federal treasuries.

Second, because our proposal would build upon the current registration system established under 49 U.S.C. sec. 11506, it could be implemented quickly and smoothly. States and carriers are now quite familiar with the current registration system, which would require minimal modification under this proposal. For example, the current insurance forms could be used without substantial change, as could the current registration forms, cab cards, and State identifiers. Moreover, the NARUC currently has under consideration a proposal to centralize the administration of this registration program so that carriers could register and renew their registration in all participating States through a single filing rather than the current State-by-State system. In short, we strongly believe that the current registration system established under an Act of Congress is well-positioned to provide important benefits to State enforcement of motor carrier safety and financial responsibility.

Third, and most importantly, our proposal would, we believe, serve the interest of the public by removing unsafe and uninsured carriers from the Nation's highways. Under our proposal, State enforcement officers would be notified quickly and conveniently of insurance cancellations or lapses, enabling them to remove uninsured vehicles from the highways. Similarly, the Federal Fitness Certificate of a carrier with a record of chronic safety violations could be revoked by the DOT. This revocation would in turn be transmitted to the State enforcement officers who would take action against the offending carrier.

In sum, we believe this suggestion for further cooperation of the States and Federal government to ensure a safe motor carrier system should be examined by this Committee.

II. State Regulation of Intrastate Transportation Safety.—As explained above, the States can play an important role in ensuring the safety of our Federal and State highways. The NARUC does not oppose a system of uniform regulations for interstate motor carrier safety as long as the States remain free to address unique local conditions fairly and responsibly without Federal interference. One of the major policy principles of the Association is the "promotion of uniformity of regulation and cooperation among regulatory agencies". To that end, the NARUC throughout its long history has sought to develop and implement uniform regulatory polices in all areas of fixed utility and transportation carrier regulation. In fact, as early as 1936 the NARUC recommended that the States conform their motor carrier safety standards with those prescribed by Federal authority for interstate carriers. We are proud of our record in this area and continue to explore additional areas in which greater uniformity may be beneficial. However, the NARUC does not believe that the framework for uniformity should be so rigid as to sacrifice flexibility thereby denying the States the opportunity to address their unique safety problems.

In addition, we strongly oppose all efforts by the Federal government to preempt the States' authority to regulate matters within their boundaries. It is our belief that the public interest is best served when decisions materially affecting the quality of citizens' lives are made by officials who are easily accessible to those citizens. State regulators are in a far better position to be knowlegeable about specific local safety needs than is the DOT. Federal jurisdiction should be limited to interstate matters which are beyond effective State regulation.

The Motor Carrier Safety Act clearly outlines the procedure for review and preemption of State regulations. 49 U.S.C. Sec. 2507. The NARUC is concerned, however, with the provisions of the Act which permit the Secretary to preempt State safety laws which are found to 1) have no safety benefit associated with it or 2) constitute an undue burden on interstate commerce. 49 U.S.C. Sec. 2507(b)(2)(B).

The individual States are in a far better position to assess the safety benefits associated with the laws they promulgate than is the Safety Panel or the Secretary. Arbitrary and unresearched decisions may be made, affecting the safety of citizens of local areas. The Association believes great care must be taken in this area to avoid Federal intrusion into the traditional powers of the States to protect the safety of their citizens. Moreover, the States should not be required to bear the burden of proof on this issue.

The NARUC also is concerned about preemption occurring as a result of a determination that the State safety law is more stringent and places an undue burden on interstate commerce. We have seen no evidence to date that existing State safety laws have unduly burdened interstate commerce. Whereas the Panel and Secretary

may determine a State law affects interstate commerce, they must be sure to apply the unduly burdensome test. If every State law that slightly burdened interstate commerce was struck down, this would severely infringe upon the jurisdiction of the States to regulate safety matters within their boundaries. In effect, the Secretary would have veto power extending into an area clearly beyond the jurisdiction of the Department of Transportation.

CONCLUSION

The Motor Carrier Safety Act of 1984 reaffirms this Nation's commitment to ensuring the safety of our highways. A Federal/State cooperative effort including efficient safety regulations and a commercial motor vehicle grants-in-aid program will provide a comprehensive motor carrier safety program that is responsive to the individual needs of each State.

Thank you for this opportunity to present these views and I will be happy to answer any questions.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question. You stated in your testimony that should federal economic deregulation of the trucking industry occur, NARUC would recommend that Congress enact legislation which requires each motor carrier operating in interstate commerce to obtain a "Federal Fitness Certificate" from the Department of Transportation before the carrier's trucks are put on the road. You also noted that the States would collect registration fees as part of this effort and that these fees would help fund State safety enforcement activities. What would be the specific role of the States in this federal certification procedure?

Answer. We would expect the States' role in the certification process to be minimal. Given that the Fitness Certificate would apply to interstate carriers, it is clearly within the perview of a Federal agency such as US DOT to determine whether an individual carrier (based on such factors as the carrier's past safety record, if any or its insurability) should be issued this document. States might participate in proceedings to revoke a Fitness Certificate by petitioning the Secretary to decertify a carrier based upon evidence of the carrier's unsafe operations.

We believe that the crucial role to be played by the States under our proposal involves vigorous enforcement of State and Federal safety rules applicable to the motor carrier industry. As your question recognizes, our proposal would provide participating States with a source of funding (registration fees) other than Federal grants or State tax revenues to be used for enforcement purposes. Our proposal would also provide the States with direct evidence, prior to the commencement of operations, of three fundamental pieces of information: the existence of the Federal Fitness Certificate, adequate and lawful insurance coverage, and in-State agents for process. We believe that the provision of this information directly to the States coupled with vigorous State inspections, road checks and other enforcement activities can improve carrier safety beyond safety programs administered by Federal agencies.

Question. You stated in your testimony your opposition to all efforts by the Federal government to preempt the States' authority to regulate matters within their boundaries and expressed your concern about provisions of the 1984 Act which allow the Secretary of Transportation to preempt State safety laws which are found to have no safety benefit or to constitute an undue burden on interstate commerce.

a. If a State safety law does not clearly promote safety, why should it remain in effect?

b. Doesn't this create an unnecessary burden on motor carriers?

Answer. a. A State may not be able to justify a "safety" law which does not promote safety in any way. However, we believe that there are few State safety laws or regulations which have no safety-related effect. Obviously some laws provide greater safety benefits than others, but we seriously doubt there are many such laws that serve absolutely no safety-related purposes.

Our concern in this area is that the question of preserving a State law or regulation which provides some safety benefits is a question of judgment: do the safety benefits provided by the law justify the costs of compliance and administration the law imposes? In our view, State legislatures and regulators are in a far better position to make this judgment in light of their knowledge of State and local circumstances than is the US DOT. Furthermore, we are particularly concerned that the

Department that makes these decisions under the Act has also proposed legislation which would prohibit States from removing carriers from their respective highways who are known and chronic violators of valid safety laws. (See Section-by-Section Analysis accompany S. 1711, The Administration's deregulation bill).

b. State laws having no safety benefit may impose unnecessary burdens on carriers. Again we submit, however, that there are few such laws now being enforced by the States.

Question. The trucking and intercity bus industries are in the midst of a serious insurance problem. What actions are the States taking to remedy the current liability insurance crisis?

Answer. The "insurance crisis" has only become an issue in recent months. Therefore, the States have just begun to address this problem in their respective jurisdictions. However, it is our understanding that individual States are considering and/or implementing the following initiatives:

Establishing emergency moratoria on the suspension of insurance coverage and increases in premiums while options for mitigating the insurance burden are considered.

Intrastate rate surcharges (much like fuel surcharges) to reflect the increased costs of insurance coverage.

Reexamination of State tort law liability and jury awards to consider placing limits on damage awards.

Increased enforcement activity to remove uninsured carriers from State highways so that such carriers cannot unfairly compete with carriers who have purchased lawful insurance coverage.

This list is by no means exhaustive. We expect the States to continue to take other appropriate actions to ensure that their citizens are protected and that the industry can operate lawfully and efficiently.

The CHAIRMAN. Thank you both very much.

I asked earlier witnesses about the idea of much more frequent spot checks, particularly at weigh stations, and one of the witnesses, I think Mr. Landis, said that there were 12 main safety features that should be inspected in a comprehensive check, and that it would take about 15 minutes to do it.

Is this an area that deserves more exploration as far as you are concerned? Should we be looking at more frequent spot inspections of trucks?

Mr. EISENHART. Yes, Senator, I think that we should be. Our association has been supportive of the CVSA concept and the concept of roadside inspections. We would like to see those again as—preferably, it would be nice to have those in conjunction with periodic inspections, if the resources were there——

The CHAIRMAN. Right. Well, we have got the periodic now, but is that a very costly item? I mean, if we were to get into this, is this a big dollar item?

Mr. EISENHART. The roadside inspections?

The CHAIRMAN. Yes.

Mr. EISENHART. It is expensive. I think whenever you have programs where you need to have continuing training and personnel and equipment, that you are talking about a certain amount of cost. I do not have figures.

The CHAIRMAN. Let me just ask you this. At the typical weigh station, all trucks pull off the road. How long does it take for the truck to, from the time that it gets into the weigh station until the time it gets out?

Mr. EISENHART. I am not sure, Senator. I do not know what the answer to that question is. I believe it is within the area between 15 minutes and a half an hour, but it could be less than that.

The CHAIRMAN. All right, now, if it is there anyhow, and there were a person, just one person at the weigh station, and that person were making an inspection during the time of the weighing, could that not be done?

Mr. EISENHART. Sure. I think it could be. I think it is being done.

The CHAIRMAN. But I am talking about on a nationwide basis.

Mr. EISENHART. Well, again, I think——

The CHAIRMAN. Maybe it is fine now, maybe we are at the ultimate stage now, but if we are not, is this something that we should be considering?

Mr. EISENHART. I think it is something that might not be a bad idea to look at. Again, I think that the real question there is can we afford it and where will the funding come from?

The CHAIRMAN. Well, it would seem to be a small cost. I mean, let's suppose——

Mr. EISENHART. You are talking about additional manpower, training, and equipment.

The CHAIRMAN. But would not, say, three or four additional people a State make a major difference. I mean, I can think of, say, weigh stations on the now famous I-70 or I-44 in my State. If you just had a person at a weigh station, say somebody rotating on and off, say four or five people a State. Would that not be a tremendous improvement?

Mr. EISENHART. I think it certainly would help, and I think we would be supportive of that.

Again, it may not be as expensive as some other measures, but there is a cost involved. As you know, the States are not in a position to spend a lot.

The CHAIRMAN. Well, that is the problem with Uncle Sam, too. But you think it is at least worth thinking about?

Mr. EISENHART. Absolutely.

The CHAIRMAN. Do you think that the equipment problems with trucks and buses are the main problem, or is it personnel? Not quality, but is it the personnel errors, human errors?

Mr. EISENHART. I think that the evidence we have is similar to that which has been related to you earlier, and that is that the overwhelming majority of accidents appear to be related to driver error, and the studies on that differ as to how great that——

The CHAIRMAN. Are we focusing relatively too much attention do you think to the equipment problem and too little on the driver problem?

Mr. EISENHART. I do not think so, Senator. I think we need to look at both very closely. Certainly the driver issue is one that seems to be getting an awful lot of attention very recently. We need to address both of these issues.

The CHAIRMAN. Do you have any comments, Mr. Gray?

Mr. GRAY. Nothing to add, sir.

The CHAIRMAN. Tell me, the uniform license idea, would the States support such a concept?

Mr. EISENHART. In what context?

The CHAIRMAN. For truck drivers?

Mr. EISENHART. With respect to a driver having only one license, certainly they would be supportive of that. If what you are talking about, referring to is a Federal license for motor carrier drivers, we

would be in opposition to that, but I would want to stress that what we are doing in terms of the driver license compact with respect to the telecommunications network that I mentioned is addressing the same things that a national or Federal driver's license for commercial carriers is meant to address. We think we have a better idea, and that is to have a very rapid and accurate way to exchange motor vehicle information, in this case, driver licensing information among States, and particularly now as it pertains to the commercial driver, so that when somebody applies for a license in State A, you are going to be able to check very quickly and accurately to determine whether that individual has a license in any other jurisdiction.

The CHAIRMAN. Gentlemen, thank you both very much. That concludes the hearing.

[Whereupon, at 11:55 a.m., the committee recessed subject to the call of the Chair.]

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